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CHAPTER 1—MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE

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HISTORICAL NOTE

This chapter includes among other statutory provisions the Sherman Act, comprising sections 1 to 7 of this title, the Clayton Act, comprising sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title and sections 52 and 53 of Title 29, Labor, the Wilson Tariff Act, comprising sections 8 and 9 of this title, the Robinson-Patman Price Discrimination Act comprising sections 13, 13a, 13b, and 21a of this title, the "Expediting Act", sections 28 and 29 of this title, and the "Hart-Scott-Rodino Antitrust Improvements Act of 1976", comprising sections 15c to 15h, 18a, and 66 of this title. For complete classification of the Hart-Scott-Rodino Act, see Short Title note under section 1 of this title.

CROSS REFERENCES

Arbitration of controversies arising out of maritime contracts or transactions, see section 1 et seq. of Title 9, Arbitration.

Associations engaged in catching and marketing aquatic products, see section 522 of this title.

Associations of producers of agriculture products monopolizing or restraining trade and unduly enhancing prices, see section 292 of Title 7, Agriculture.

Automobile dealer suits against manufacturers, see chapter 27 of this title.

Bids for services and supplies for armed forces violating anti-trust laws, reference to Attorney General, see section 2305 of Title 10, Armed Forces.

Carriers—

- Agreements between carriers as to rates, spares, etc., see section 5b of Title 49, Transportation.
- Combinations to prevent continuous carriage of freight prohibited, see section 7 of Title 49.
- Consolidation or merger as relieving from operation of anti-trust laws, see section 5 of Title 49.

Department of Commerce, see section 1501 et seq. of this title.

District courts, original jurisdiction of any civil action or proceeding arising under this chapter, see section 1337 of Title 28, Judiciary and Judicial Procedure.

Electrical energy, monopolistic combinations prohibited, see section 803 of Title 16, Conservation.

Exemptions from anti-trust laws—

- Marketing agreements of Secretary of Agriculture with manufacturers and others engaged in handling anti-hog-cholera serum and hog-cholera virus, see section 852 of Title 7, Agriculture.
- Marketing agreements of Secretary of Agriculture with processors, producers, associations of producers, and others engaged in handling any agricultural commodity or product thereof, see section 608b of Title 7.
- Meetings, awards, and agreements concerning marketing of milk or its products, see section 671 of Title 7.

Export trade, applicability of sections 1 to 7 of this title, see section 62 of this title.

Federal Trade Commission—

- Investigation of compliance with anti-trust decrees and violation of anti-trust statutes, and recommendations for readjustment of business of offending corporations, see section 46 of this title.
- Reference of equity suits to commission, see section 47 of this title.

Import trade—

- Sale of imported articles at less than market value or wholesale price prohibited, see section 72 of this title.
- Unfair methods of competition and unfair practices in import trade as unlawful, see section 1337 of Title 19, Customs Duties.

Insurance business as subject to this chapter, see sections 1012 and 1013 of this title.

Packers or live poultry dealers restraining commerce or creating a monopoly, see section 192 of Title 7, Agriculture.

Radio—

- Competition in commerce, see section 314 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.
- Manufacture or sale, see section 313 of Title 47.

Telecasting of professional sports contests, antitrust laws exemption, see section 1291 et seq. of this title.

Tobacco control, compacts between states, see section 515 of Title 7, Agriculture.

CONGRESSIONAL INVESTIGATION OF MONOPOLY

Joint Res. June 16, 1938, ch. 456, 52 Stat. 705, created a Temporary National Economic Committee which was authorized to make a full investigation on monopoly and the concentration of economic power in and financial control over production and distribution of goods and services.

The time for submitting the final report under Joint Res. June 16, 1938, ch. 456, 52 Stat. 705, as amended Apr. 26, 1939, ch. 104, §§ 1, 2, 53 Stat. 624, was extended to Apr. 3, 1941, by Joint Res. Dec. 16, 1940; ch. 932, 54 Stat. 1225.

The committee's report was presented to Congress on March 31, 1941, and was published in Senate Document No. 35.

ANTITRUST ACTS AND LAWS DEFINED IN OTHER SECTIONS

Antitrust acts and laws are defined in sections 12, 44, 1311 of this title; title 10 section 7430; title 12 sections 1828, 1849; title 28 section 1407; title 30 section 184; title 33 section 1502; title 42 sections 5417, 5909, 6202; title 45 section 791; title 49 sections 5b, 1384; title 50 App. sections 1941a, 2158.

§ 1. Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, § 1, 26 Stat. 209; Aug. 17, 1937, ch. 690, title VIII, 50 Stat. 693; July 7, 1955, ch. 281, 69 Stat. 282; Dec. 21, 1974, Pub. L. 93-528, § 3, 88 Stat. 1708; Dec. 12, 1975, Pub. L. 94-145, § 2, 89 Stat. 801.)

AMENDMENTS

1975—Pub. L. 94-145 deleted from first sentence two provisos granting anti-trust exemption to State fair trade laws.

1974—Pub. L. 93-528 substituted "a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years" for "a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year".

1955—Act July 7, 1955, substituted "fifty thousand dollars" for "five thousand dollars".

1937—Act Aug. 17, 1937, added the two provisos.

EFFECTIVE DATE OF 1975 AMENDMENT.

Section 4 of Pub. L. 94-145 provided that: "The amendments made by sections 2 and 3 of this Act [to this section and section 45(a) of this title] shall take effect upon the expiration of the ninety-day period which begins on the date of enactment of this Act [Dec. 12, 1975]."

SHORT TITLE OF 1976 AMENDMENT

Section 1 of Pub. L. 94-435, Sept. 30, 1976, 90 Stat. 1383, provided: "That this Act [enacting sections 15c to 15h, 18a, and 66 of this title, amending sections 12, 15b, 16, 26, and 1311 to 1314 of this title, section 1505 of Title 18, Crimes and Criminal Procedure, and section 1407 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 1, 8, 15c, 18a, and 1311 of this title] may be cited as the 'Hart-Scott-Rodino Antitrust Improvements Act of 1976'."

SHORT TITLE OF 1975 AMENDMENT

Section 1 of Pub. L. 94-145 provided: "That this Act [which amended this section and section 45(a) of this title and enacted provisions set out as a note under this section] may be cited as the 'Consumer Goods Pricing Act of 1975'."

SHORT TITLE OF 1974 AMENDMENT

Section 1 of Pub. L. 93-528 provided: "That this Act [amending this section, and sections 2, 3, 16, 28, and 29 of this title, section 401 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and sections 43, 44, and 45 of Title 49, Transportation, and enacting provisions set out as notes under sections 1 and 29 of this title] may be cited as the 'Antitrust Procedures and Penalties Act'."

SHORT TITLE

Pub. L. 94-435, title III, § 305(a), Sept. 30, 1976, 90 Stat. 1397, added immediately following the enacting clause of act July 2, 1890, the following: "That this Act [sections 1 to 7 of this title] may be cited as the 'Sherman Act'."

CROSS REFERENCES

Antitrust laws inapplicable to labor organizations, see section 17 of this title.

Carriers relieved from operation of this chapter, see section 5 of Title 49, Transportation.

Combinations in restraint of import trade, see section 8 of this title.

Conspiracy to commit offense or to defraud United States, see section 371 of Title 18, Crimes and Criminal Procedure.

Discrimination in price, services or facilities, see section 13 of this title.

Felony, offense punishable by death or imprisonment for a term exceeding one year as, see section 1 of Title 18, Crimes and Criminal Procedure.

Fishing industry, restraints of trade in, see section 522 of this title.

Monopolies prohibited, see section 2 of this title.

Trusts in territories or District of Columbia prohibited, see section 3 of this title.

SHERMAN ACT REFERRED TO IN OTHER SECTIONS

The Sherman Act [15 U.S.C. 1 to 7] is referred to in sections 12, 15c, 15d, 28, 29, 30, 31, 62, 1012, 1013 of this title; title 7 section 225; title 10 section 7430; title 12 sections 1828, 1849; title 26 section 311; title 30 section 184; title 33 section 1502; title 42 section 2135; title 46 section 814; title 49 sections 44, 45.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4, 6, 7, 18a of this title.

§ 2. Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, § 2, 26 Stat. 209; July 7, 1955, ch. 281, 69 Stat. 282; Dec. 21, 1974, Pub. L. 93-528, § 3, 88 Stat. 1708.)

AMENDMENTS

1974—Pub. L. 93-528 substituted "a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years" for "a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year".

1955—Act July 7, 1955, substituted "fifty thousand dollars" for "five thousand dollars".

CROSS REFERENCES

Antitrust laws inapplicable to labor organizations, see section 17 of this title.

Carriers relieved from operation of this chapter, see section 5 of Title 49, Transportation.

Combinations in restraint of import trade, see section 8 of this title.

Conspiracy to commit offense or to defraud United States, see section 371 of Title 18, Crimes and Criminal Procedure.

Discrimination in price, services or facilities, see section 13 of this title.

Felony, offense punishable by death or imprisonment for a term exceeding one year, as, see section 1 of Title 18, Crimes and Criminal Procedure.

Fishing industry, monopolies in, see section 522 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 18a of this title.

§ 3. Trusts in Territories or District of Columbia illegal; combination a felony.

Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, § 3, 26 Stat. 209; July 7, 1955, ch. 281, 69 Stat. 282; Dec. 21, 1974, Pub. L. 93-528, § 3, 88 Stat. 1708.)

AMENDMENTS

1974—Pub. L. 93-528 substituted "a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years" for "a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year".

1955—Act July 7, 1955, substituted "fifty thousand dollars" for "five thousand".

CROSS REFERENCES

Antitrust laws inapplicable to labor organizations, see section 17 of this title.

Carriers relieved from operation of this chapter, see section 5 of Title 49, Transportation.

Combinations in restraint of import trade, see section 8 of this title.

Conspiracy to commit offense or to defraud United States, see section 371 of Title 18, Crimes and Criminal Procedure.

Discrimination in price, services or facilities, see section 13 of this title.

Felony, offense punishable by death or imprisonment for a term exceeding one year as, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 4. Jurisdiction of courts; duty of United States attorneys; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

(July 2, 1890, ch. 647, § 4, 26 Stat. 209; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

CODIFICATION

Act Mar. 3, 1911, vested jurisdiction in "district" courts, instead of "circuit" courts.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys of the United States". See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

CROSS REFERENCES

Issuance of injunctions in labor disputes, see sections 52 and 107 of Title 29, Labor.

Restraining trusts in restraint of import trade, see section 9 of this title.

Restraining violations of Clayton Act, see sections 25 and 26 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Commencement of action by filing a complaint with the court, see rule 3, Title 28, Appendix, Judiciary and Judicial Procedure.

Continuation of section under rule 65, see note by Advisory Committee under rule 65.

Injunctions, see rule 65.

One form of action, see rule 2.

Pleadings allowed, see rule 7.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5 of this title.

§ 5. Bringing in additional parties

Whenever it shall appear to the court before which any proceeding under section 4 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

(July 2, 1890, ch. 647, § 5, 26 Stat. 210.)

CROSS REFERENCES

Bringing in additional parties, see, also, sections 10 and 25 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Adding or dropping parties, see rule 21, Title 28, Appendix, Judiciary and Judicial Procedure.

Continuance of section under rule 4, see note by Advisory Committee under rule 4.

Process, see rule 4.

§ 6. Forfeiture of property in transit

Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section 1 of this title, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

(July 2, 1890, ch. 647, § 6, 26 Stat. 210.)

CROSS REFERENCES

Fines, penalties, and forfeitures, see chapter 163 of Title 28, Judiciary and Judicial Procedure.

Forfeiture of property in transit, see, also, section 11 of this title.

§ 7. "Person" defined

The word "person", or "persons", wherever used in sections 1 to 7 of this title shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(July 2, 1890, ch. 647, § 8, 26 Stat. 210.)

CROSS REFERENCES

Definition of person, see, also, section 12 of this title.

Liability of corporate directors and agents for violation of antitrust laws, see section 24 of this title.

§ 8. Trusts in restraint of import trade illegal; penalty

Every combination, conspiracy, trust, agreement, or contract is declared to be contrary to public policy, illegal, and void when the same is made by or between two or more persons or corporations, either of whom, as agent or principal, is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who shall be engaged in the importation of goods or any commodity from any foreign country in violation of this section, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and on conviction thereof in any court of the United States such person shall be fined in a sum not less than $100 and not exceeding $5,000, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.

(Aug. 27, 1894, ch. 349, § 73, 28 Stat. 570; Feb. 12, 1913, ch. 40, 37 Stat. 667.)

AMENDMENTS

1913—Act Feb. 12, 1913, inserted "as agent or principal".

SHORT TITLE

Section 78 of act Aug. 27, 1894, as added by Pub. L. 94-435, title III, § 305(d), Sept. 30, 1976, 90 Stat. 1397, provided that: "Sections 73, 74, 75, 76, and 77 of this Act [sections 8 to 11 of this title] may be cited as the 'Wilson Tariff Act'."

CROSS REFERENCES

Combinations in restraint of trade or commerce, see section 1 of this title.

Immunity of witnesses, see section 6001 of Title 18, Crimes and Criminal Procedure.

Misdemeanor, offense punishable by imprisonment not exceeding one year as, see section 1 of Title 18.

Monopolies in restraint of trade or commerce, see section 2 of this title.

Panama Canal closed to violators of antitrust laws, see section 31 of this title.

WILSON TARIFF ACT REFERRED TO IN OTHER SECTIONS

The Wilson Tariff Act [15 U.S.C. 8 to 11] is referred to in section 31 of this title; title 7 section 225; title 42 section 2135; title 46 section 814.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9, 11 of this title; title 10 section 7430; title 30 section 184; title 33 section 1502.

§ 9. Jurisdiction of courts; duty of United States attorneys; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of section 8 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

(Aug. 27, 1894, ch. 349, § 74, 28 Stat. 570; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

CODIFICATION

Act Mar. 3, 1911, vested jurisdiction in "district" courts, instead of "circuit" courts.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys of the United States". See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

CROSS REFERENCES

Issuance of injunctions in labor disputes, see sections 52 and 107 of Title 29, Labor.

Restraining violations of Clayton Act, see sections 25 and 26 of this title.

Restraining violations of Sherman Act, see section 4 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Commencement of action by filing a complaint with the court, see rule 3, Title 28, Appendix, Judiciary and Judicial Procedure.

Injunctions, see rule 65.

One form of action, see rule 2.

Pleadings allowed, see rule 7.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10 of this title; title 10 section 7430; title 30 section 184; title 33 section 1502.

§ 10. Bringing in additional parties

Whenever it shall appear to the court before which any proceeding under section 9 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

(Aug. 27, 1894, ch. 349, § 75, 28 Stat. 570.)

CROSS REFERENCES

Additional parties, see, also, sections 5 and 25 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Modification of section by rule 4, see note by Advisory Committee under rule 4, Title 28, Appendix, Judiciary and Judicial Procedure.

Process, see rule 4.

§ 11. Forfeiture of property in transit

Any property owned under any contract or by any combination, or pursuant to any conspiracy, and being the subject thereof, mentioned in section 8 of this title, imported into and being within the United States or being in the course of transportation from one State to another, or to or from a Territory or the District of Columbia, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

(Aug. 27, 1894, ch. 349, § 76, 28 Stat. 570; Feb. 12, 1913, ch. 40, 37 Stat. 667.)

AMENDMENTS

1913—Act Feb. 12, 1913, substituted "imported into and being within the United States or" for "and".

CROSS REFERENCES

Fines, penalties, and forfeitures, see chapter 163 (§ 2461 et seq.) of Title 28, Judiciary and Judicial Procedure.

Forfeiture of property in transit, see, also, section 6 of this title.

§ 12. Words defined; short title

(a) "Antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the

Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(b) This Act may be cited as the "Clayton Act".

(Oct. 15, 1914, ch. 323, 38 Stat. 730; Sept. 30, 1976, Pub. L. 94-435, title III, § 305(b), 90 Stat. 1397.)

References in Text

Words "herein" and "this Act", referred to in the three paragraphs of subsec. (a), mean the Clayton Act. For classification of the Clayton Act to the Code, see last paragraph hereunder.

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, referred to in subsec. (a); is act July 2, 1890, ch. 647, 26 Stat. 209, known as the Sherman Act, which is classified to sections 1 to 7 of this title.

The Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four, referred to in subsec. (a); is act Aug. 27, 1894, ch. 349, 28 Stat. 509, known as the Wilson Tariff Act. Sections seventy-three to seventy-six thereof are set out as sections 8 to 11 of this title. Section seventy-seven thereof was not classified to the Code.

The Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes'," approved February twelfth, nineteen hundred and thirteen, referred to in subsec. (a), is act Feb. 12, 1913, ch. 40, 37 Stat. 667, which is classified to sections 8 and 11 of this title.

The Clayton Act, referred to in subsec. (b), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, and is set out as sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. Sections 9 and 21 to 25 of the act were repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948, and their provisions are now covered by sections 402, 660, 3285 and 3691 of Title 18, Crimes and Criminal Procedure, except that former section 23 of the act is obsolete and not now covered. Sections 17 to 19 of the act were repealed by act June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948, and their provisions are now covered by rule 65 of the Federal Rules of Civil Procedure, Title 28, Appendix, Judiciary and Judicial Procedure. For complete classification of this Act to the Code, see Tables volume.

Codification

The 3d par. of subsec. (a) is also classified to section 53 of Title 29, Labor.

Amendments

1976—Pub. L. 94-435 designated existing provisions as subsec. (a) and added subsec. (b).

Cross References

Federal Aviation Act of 1958, legal restraints under, see section 1384 of Title 49, Transportation.

Insurance business, applicability of sections 12 to 27 to, see section 1011 et seq. of this title.

Clayton Act Referred to in Other Sections

The Clayton Act [see "References in Text" note to this section] is referred to in sections 1012, 1013 of this title; title 7 section 225; title 10 section 7430; title 12 sections 1828, 1849; title 26 section 311; title 30 section 184; title 33 section 1502; title 42 section 2135.

Section Referred to in Other Sections

This section is referred to in sections 1291, 1311 of this title; title 19 section 2033; title 49 sections 5b, 1384.

§ 13. Discrimination in price, services, or facilities

(a) Price; selection of customers

It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however*, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: *And provided further*, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Burden of rebutting prima-facie case of discrimination

Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however*, That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

(c) Payment or acceptance of commission, brokerage or other compensation

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(d) Payment for services or facilities for processing or sale

It shall be unlawful for any person engaged in commerce to pay or contact for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(e) Furnishing services or facilities for processing, handling, etc.

It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(f) Knowingly inducing or receiving discriminatory price

It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

(Oct. 15, 1914, ch. 323, § 2, 38 Stat. 730; June 19, 1936, ch. 592, § 1, 49 Stat. 1526.)

AMENDMENTS

1936—Act June 19, 1936, amended section generally.

SHORT TITLE

Act June 19, 1936, which amended this section and added sections 13a, 13b, and 21a of this title, is commonly known as the Robinson-Patman Price Discrimination Act.

CROSS REFERENCES

Administrative authority to enforce compliance with this section, see section 21 of this title.

Exemption of non-profit institutions from provisions of this section, see section 13c of this title.

Power of Federal Trade Commission to prevent unfair trade practices, see section 45 of this title.

ROBINSON-PATMAN PRICE DISCRIMINATION ACT REFERRED TO IN OTHER SECTIONS

The Robinson-Patman Price Discrimination Act [15 U.S.C. 13 to 13b, 21a] is referred to in sections 13b, 13c, 21a, 1013 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 21a, 26 of this title; title 30 section 184.

§ 13a. Discrimination in rebates, discounts, or advertising service charges; underselling in particular localities; penalties

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates to his knowledge against competitors of the purchaser, in that, any discount, rebate, allowance, or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance, or advertising service charge available at the time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity; to sell, or contract to sell, goods in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition, or eliminating a competitor in such part of the United States; or, to sell, or contract to sell, goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.

Any person violating any of the provisions of this section shall, upon conviction thereof, be fined not more than $5,000 or imprisoned not more than one year, or both.

(June 19, 1936, ch. 592, § 3, 49 Stat. 1528.)

Cross References

Exemption on non-profit institutions from provisions of this section, see section 13c of this title.

Misdemeanor, offense punishable by imprisonment not exceeding one year as, see section 1 of Title 18, Crimes and Criminal Procedure.

Section Referred to in Other Sections

This section is referred to in title 10 section 7430; title 30 section 184.

§ 13b. Cooperative association; return of net earnings or surplus

Nothing in this Act shall prevent a cooperative association from returning to its members, producers, or consumers the whole, or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association.

(June 19, 1936, ch. 592, § 4, 49 Stat. 1528.)

References in Text

This Act, referred to in text, is the Robinson-Patman Antidiscrimination Act. For classification of the Act to the Code, see Short Title note under section 13 of this title.

Cross References

Exemptions on non-profit institutions from provisions of this section, see section 13c of this title.

Section Referred to in Other Sections

This section is referred to in title 10 section 7430.

§ 13c. Exemption of non-profit institutions from price discrimination provisions

Nothing in the Act approved June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.

(May 26, 1938, ch. 283, 52 Stat. 446.)

References in Text

For classification to the Code of the Robinson-Patman Antidiscrimination Act, referred to in text, see Short Title note under section 13 of this title.

§ 14. Sale, etc., on agreement not to use goods of competitor

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

(Oct. 15, 1914, ch. 323, § 3, 38 Stat. 731.)

Cross References

Administrative authority to enforce compliance with this section, see section 21 of this title.

Monopolizing trade, see section 2 of this title.

Section Referred to in Other Sections

This section is referred to in sections 21, 26 of this title.

§ 15. Suits by persons injured; amount of recovery

Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

(Oct. 15, 1914, ch. 323, § 4, 38 Stat. 731.)

References in Text

The antitrust laws, referred to in text, are defined in section 12 of this title.

Codification

Section supersedes two former similar sections enacted by act July 2, 1890, ch. 647, § 7, 26 Stat. 210, and act Aug. 27, 1894, ch. 349, § 77, 28 Stat. 570, each of which were restricted in operation to the particular act cited.

Repeals

Section 7 of act July 2, 1890, ch. 647, 26 Stat. 210, which was superseded by this section, was repealed by act July 7, 1955, ch. 283, § 3, 69 Stat. 283. For effective date of repeal, see note set out under section 15b of this title.

Cross References

Jurisdiction of civil action or proceeding arising under commerce and anti-trust regulations, see section 1337 of Title 28, Judiciary and Judicial Procedure.

Limitation of action, suspension of, see note under section 16 of this title.

Venue and service of process in action against corporation, see section 22 of this title.

Venue of district courts, see section 1391 et seq. of Title 28, Judiciary and Judicial Procedure.

Federal Rules of Civil Procedure

Costs, see rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

Effect of rule 54 on this section, see note by Advisory Committee under rule 54.

Section Referred to in Other Sections

This section is referred to in sections 15b, 15c, 16 of this title; title 26 sections 162, 186.

§ 15a. Suits by United States; amount of recovery

Whenever the United States is hereafter injured in its business or property by reason of anything forbidden in the antitrust laws it may sue therefor in the United States district court for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover actual damages by it sustained and the cost of suit.

(Oct. 15, 1914, ch. 323, § 4A, as added July 7, 1955, ch. 283, § 1, 69 Stat. 282.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

EFFECTIVE DATE

Section effective six months after July 7, 1955, see note set out under section 15b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15b, 16 of this title.

§ 15b. Limitation of actions

Any action to enforce any cause of action under sections 15, 15a, or 15c of this title shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.

(Oct. 15, 1914, ch. 323, § 4B, as added July 7, 1955, ch. 283, § 1, 69 Stat. 283, and amended Sept. 30, 1976, Pub. L. 94-435, Title III, § 302(1), 90 Stat. 1396.)

REFERENCES IN TEXT

The effective date of this Act, referred to in text, probably refers to the effective date of act July 7, 1955, ch. 283, 69 Stat. 282, which was six months after July 7, 1955.

This Act, referred to in text, probably refers to act July 7, 1955.

AMENDMENTS

1976—Pub. L. 94-435 substituted "sections 15, 15a, or 15c" for "sections 15 or 15a".

EFFECTIVE DATE

Section 4 of act July 7, 1955, provided that the addition of sections 15a and 15b and the amendment of section 16 of this title by that act shall take effect six months after its enactment [July 7, 1955].

§ 15c. Actions by state attorneys general

(a) Parens patriae; monetary relief; damages

(1) Any attorney general of a State may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any district court of the United States having jurisdiction of the defendant, to secure monetary relief as provided in this section for injury sustained by such natural persons to their property by reason of any violation of sections 1 to 7 of this title. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief (A) which duplicates amounts which have been awarded for the same injury, or (B) which is properly allocable to (i) natural persons who have excluded their claims pursuant to subsection (b)(2) of this section, and (ii) any business entity.

(2) The court shall award the State as monetary relief threefold the total damage sustained as described in paragraph (1) of this subsection, and the cost of suit, including a reasonable attorney's fee.

(b) Notice; exclusion election; final judgment

(1) In any action brought under subsection (a)(1) of this section, the State attorney general shall, at such times, in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case.

(2) Any person on whose behalf an action is brought under subsection (a)(1) of this section may elect to exclude from adjudication the portion of the State claim for monetary relief attributable to him by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1) of this subsection.

(3) The final judgment in an action under subsection (a)(1) of this section shall be res judicata as to any claim under section 15 of this title by any person on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to paragraph (1) of this subsection.

(c) Dismissal or compromise of action

An action under subsection (a)(1) of this section shall not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

(d) Attorneys' fees

In any action under subsection (a) of this section—

(1) the amount of the plaintiffs' attorney's fee, if any, shall be determined by the court; and

(2) the court may, in its discretion, award a reasonable attorney's fee to a prevailing defendant upon a finding that the State attorney general has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

(Oct.15, 1914, ch. 323, § 4C, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 301, 90 Stat. 1394.)

EFFECTIVE DATE

Section 304 of Pub. L. 94-435 provided that: "The amendments to the Clayton Act [sections 12, 13, 14 to 19, 20, 21, 22 to 27 of this title and sections 52 and 53 of Title 29, Labor] made by section 301 of this Act [enacting sections 15c to 15h of this title] shall not apply to any injury sustained prior to the date of enactment of this Act [Sept. 30, 1976]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15b, 15d, 15e, 15g, 15h, 16 of this title; title 28 section 1407.

§ 15d. Measurement of damages

In any action under section 15c(a)(1) of this title, in which there has been a determination that a defendant agreed to fix prices in violation of sections 1 to 7 of this title, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

(Oct. 15, 1914, ch. 323, § 4D, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 301, 90 Stat. 1395.)

Effective Date

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

Section Referred to in Other Sections

This section is referred to in sections 15g, 15h of this title.

§ 15e. Distribution of damages

Monetary relief recovered in an action under section 15c(a)(1) of this title shall—

(1) be distributed in such manner as the district court in its discretion may authorize; or

(2) be deemed a civil penalty by the court and deposited with the State as general revenues;

subject in either case to the requirement that any distribution procedure adopted afford each person a reasonable opportunity to secure his appropriate portion of the net monetary relief.

(Oct. 15, 1914, ch. 323, § 4E, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 301, 90 Stat. 1395.)

Effective Date

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

Section Referred to in Other Sections

This section is referred to in sections 15g, 15h of this title.

§ 15f. Actions by Attorney General

(a) Whenever the Attorney General of the United States has brought an action under the antitrust laws, and he has reason to believe that any State attorney general would be entitled to bring an action under this Act based substantially on the same alleged violation of the antitrust laws, he shall promptly give written notification thereof to such State attorney general.

(b) To assist a State attorney general in evaluating the notice or in bringing any action under this Act, the Attorney General of the United States shall, upon request by such State attorney general, make available to him, to the extent permitted by law, any investigative files or other materials which are or may be relevant or material to the actual or potential cause of action under this Act.

(Oct. 15, 1914, ch. 323, § 4F, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 301, 90 Stat. 1395.)

References in Text

The antitrust laws, referred to in subsec. (a), are defined in section 12 of this title.

This Act, referred to in subsecs. (a) and (b), means act of October 15, 1914, which is known as the Clayton Act, and is classified to sections 12, 13, 14 to 19, 20, 21, and 22 to 27, of this title, and sections 52 and 53 of Title 29, Labor.

Effective Date

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

Section Referred to in Other Sections

This section is referred to in sections 15g, 15h of this title.

§ 15g. Definitions

For the purposes of sections 15c, 15d, 15e, and 15f of this title:

(1) The term "State attorney general" means the chief legal officer of a State, or any other person authorized by State law to bring actions under section 15c of this title, and includes the Corporation Counsel of the District of Columbia, except that such term does not include any person employed or retained on—

(A) a contingency fee based on a percentage of the monetary relief awarded under this section; or

(B) any other contingency fee basis, unless the amount of the award of a reasonable attorney's fee to a prevailing plaintiff is determined by the court under section 15c(d)(1) of this title.

(2) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(3) The term "natural persons" does not include proprietorships or partnerships.

(Oct. 15, 1914, ch. 323, § 4G, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 301, 90 Stat. 1396.)

Effective Date

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

Section Referred to in Other Sections

This section is referred to in section 15h of this title.

§ 15h. Applicability of parens patriae actions

Sections 15c, 15d, 15e, 15f, and 15g of this title shall apply in any State, unless such State provides by law for its nonapplicability in such State.

(Oct. 15, 1914, ch. 323, § 4H, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 301, 90 Stat. 1396.)

Effective Date

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

§ 16. Judgments

(a) Prima facie evidence

A final judgment or decree heretofore or hereafter rendered in any civil or ciminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said laws or by the United States under section 15a of this title, as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, That this section shall not apply to consent judgments or decrees entered before any testimony has been taken or to judgments or decrees entered in actions under section 15a of this title.

(b) Consent judgments and competitive impact statements; publication in Federal Register; availability of copies to the public

Any proposal for a consent judgment submitted by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws shall be filed with the district court before which such proceeding is pending and published by the United States in the Federal Register at least 60 days prior to the effective date of such judgment. Any written comments relating to such proposal and any responses by the United States thereto, shall also be filed with such district court and published by the United States in the Federal Register within such sixty-day period. Copies of such proposal and any other materials and documents which the United States considered determinative in formulating such proposal, shall also be made available to the public at the district court and in such other districts as the court may subsequently direct. Simultaneously with the filing of such proposal, unless otherwise instructed by the court, the United States shall file with the district court, publish in the Federal Register, and thereafter furnish to any person upon request, a competitive impact statement which shall recite—

(1) the nature and purpose of the proceeding;

(2) a description of the practices or events giving rise to the alleged violation of the antitrust laws;

(3) an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;

(4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding;

(5) a description of the procedures available for modification of such proposal; and

(6) a description and evaluation of alternatives to such proposal actually considered by the United States.

(c) Publication of summaries in newspapers

The United States shall also cause to be published, commencing at least 60 days prior to the effective date of the judgment described in subsection (b) of this section, for 7 days over a period of 2 weeks in newspapers of general circulation of the district in which the case has been filed, in the District of Columbia, and in such other districts as the court may direct—

(i) a summary of the terms of the proposal for consent judgment,

(ii) a summary of the competitive impact statement filed under subsection (b) of this section,

(iii) and a list of the materials and documents under subsection (b) of this section which the United States shall make available for purposes of meaningful public comment, and the place where such materials and documents are available for public inspection.

(d) Consideration of public comments by Attorney General and publication of response

During the 60-day period as specified in subsection (b) of this section, and such additional time as the United States may request and the court may grant, the United States shall receive and consider any written comments relating to the proposal for the consent judgment submitted under subsection (b) of this section. The Attorney General or his designee shall establish procedures to carry out the provisions of this subsection, but such 60-day time period shall not be shortened except by order of the district court upon a showing that (1) extraordinary circumstances require such shortening and (2) such shortening is not adverse to the public interest. At the close of the period during which such comments may be received, the United States shall file with the district court and cause to be published in the Federal Register a response to such comments.

(e) Public interest determination

Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

(f) Procedure for public interest determination

In making its determination under subsection (e) of this section, the court may—

(1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

(2) appoint a special master and such outside consultants or expert witnesses as the court may deem appropriate; and request and obtain the views, evaluations, or advice of any individual, group or agency of government with respect to any aspects of the proposed judgment or the effect of such judgment, in such manner as the court deems appropriate;

(3) authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, intervention as a party pursuant to the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner

and extent which serves the public interest as the court may deem appropriate;

(4) review any comments including any objections filed with the United States under subsection (d) of this section concerning the proposed judgment and the responses of the United States to such comments and objections; and

(5) take such other action in the public interest as the court may deem appropriate.

(g) Filing of written or oral communications with the district court

Not later than 10 days following the date of the filing of any proposal for a consent judgment under subsection (b) of this section, each defendant shall file with the district court a description of any and all written or oral communications by or on behalf of such defendant, including any and all written or oral communications on behalf of such defendant, or other person, with any officer or employee of the United States concerning or relevant to such proposal, except that any such communications made by counsel of record alone with the Attorney General or the employees of the Department of Justice alone shall be excluded from the requirements of this subsection. Prior to the entry of any consent judgment pursuant to the antitrust laws, each defendant shall certify to the district court that the requirements of this subsection have been complied with and that such filing is a true and complete description of such communications known to the defendant or which the defendant reasonably should have known.

(h) Inadmissibility as evidence of proceedings before the district court and the competitive impact statement

Proceedings before the district court under subsections (e) and (f) of this section, and the competitive impact statement filed under subsection (b) of this section, shall not be admissible against any defendant in any action or proceeding brought by any other party against such defendant under the antitrust laws or by the United States under section 15a of this title nor constitute a basis for the introduction of the consent judgment as prima facie evidence against such defendant in any such action or proceeding.

(i) Suspension of limitations

Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, but not including an action under section 15a of this title, the running of the statute of limitations in respect to every private or State right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: *Provided, however,* That whenever the running of the statute of limitations in respect of a cause of action arising under section 15 or 15c of this title is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued.

(Oct. 15, 1914, ch. 323, §5, 38 Stat. 731; July 7, 1955, ch. 283, §2, 69 Stat. 283; Dec. 21, 1974, Pub. L. 93-528, §2, 88 Stat. 1706; Sept. 30, 1976, Pub. L. 94-435, title III, §302(2), 90 Stat. 1396.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsecs. (a), (b), (g) to (i), are defined in section 12 of this title.

CODIFICATION

The first paragraph of section 5 of act Oct. 15, 1914, contained a second proviso, applicable to pending proceedings, as follows: "*Provided further,* This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken."

AMENDMENTS

1976—Pub. L. 94-435 substituted "private or State right of action" for "private right of action" and "section 15 or 15c" for "section 15".

1974—Subsecs. (b) to (h). Pub. L. 93-528 added subsecs. (b) to (h). Former subsec. (b) redesignated subsec. (i).

Subsec. (i). Pub. L. 93-528 redesignated former subsec. (b) as (i).

1955—Act July 7, 1955, substituted subsec. (a) for the first paragraph, to provide that final judgments in actions under the antitrust laws by the United States shall be prima facie evidence in damage suits by the United States as well as in private damage suits, and substituted subsec. (b) for the second paragraph, to provide for a one-year suspension of limitations.

SUSPENSION OF LIMITATION

Act Oct. 10, 1942, ch. 589, 56 Stat. 781, as amended June 30, 1945, ch. 213, 59 Stat. 306, provided for the suspension of any existing statutes of limitations relating to violations of antitrust laws now indictable or subject to civil proceedings under any existing statutes, until June 30, 1946.

FEDERAL RULES OF APPELLATE PROCEDURE

Stay or injunction pending appeal, see rule 8, Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Judgment, see rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

One form of action, see rule 2.

Rules of governing the procedure in all suits of a civil nature cognizable as cases at law or in equity, see rule 1.

FEDERAL RULES OF CRIMINAL PROCEDURE

Sentence and judgment, see rule 32, Title 18, Appendix, Crimes and Criminal Procedure.

Verdict, see rule 31.

§17. Antitrust laws not applicable to labor organizations

The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

(Oct. 15, 1914, ch. 323, § 6, 38 Stat. 731.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

CROSS REFERENCES

Jurisdiction to restrain violations of restrictions on payments to employee representatives without regard to section, see section 186 of Title 29, Labor.

Restriction of injunctive relief in labor actions, see sections 52 and 107 of Title 29.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1951; title 29 section 186; title 47 section 606.

§ 18. Acquisition by one corporation of stock of another

No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more corporations engaged in commerce, where in any line of commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Civil Aeronautics Board, Federal Communications Commission, Federal Power Commission, Interstate Commerce Commission, the Securities and Exchange Commission in the exercise of its jurisdiction under section 79j of this title, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission, Secretary, or Board.

(Oct. 15, 1914, ch. 323, § 7, 38 Stat. 731; Dec. 29, 1950, ch. 1184, 64 Stat. 1125.)

AMENDMENTS

1950—Act Dec. 29, 1950, amended section generally so as to prohibit the acquisition of the whole or any part of the assets of another corporation when the effect of the acquisition may substantially lessen competition or tend to create a monopoly.

ABOLISHMENT OF COMMISSION AND TRANSFER OF FUNCTIONS

All executive and administrative functions of the Maritime Commission were transferred to the Chairman of the Maritime Commission by Reorg. Plan No. 6 of 1949, eff. Aug. 19, 1949, 14 F.R. 5228, 63 Stat. 1069, set out in the Appendix to Title 5, Government Organization and Employees. See, also, notes set out under section 1111 of Title 46, Shipping.

The United States Maritime Commission was abolished by Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, which transferred part of its functions and part of the functions of its Chairman, to the Federal Maritime Board and the Chairman thereof, such Board having been created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of such Commission's functions and the functions of its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration, which likewise was established by the Plan in the Department of Commerce with the provision that the Chairman of the Federal Maritime Board should, ex officio, be such Administrator.

Section 304 of Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, abolished the Federal Maritime Board, including the offices of the members of the Board. Functions of the Board were transferred either to the Federal Maritime Commission or to the Secretary of Commerce by sections 103 and 202 of Reorg. Plan No. 7 of 1961.

CROSS REFERENCES

Acquisition of stock of export trade corporation, see section 63 of this title.

Administrative authority to enforce compliance with this section, see section 21 of this title.

Divestment of stock held contrary to the provisions of this section, see section 21 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18a, 21, 26, 63 of this title.

§ 18a. Premerger notification and waiting period

(a) Filing

Except as exempted pursuant to subsection (c) of this section, no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) of this section and the waiting period described in subsection (b)(1) of this section has expired, if—

(1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce;

(2)(A) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of $10,000,000 or more are being acquired by any person which has total assets or annual net sales of $100,000,000 or more;

(B) any voting securities or assets of a person not engaged in manufacturing which has total assets of $10,000,000 or more are being acquired by any person which has total assets or annual net sales of $100,000,000 or more; or

(C) any voting securities or assets of a person with annual net sales or total assets of $100,000,000 or more are being acquired by any person with total assets or annual net sales of $10,000,000 or more; and

(3) as a result of such acquisition, the acquiring person would hold—

(A) 15 per centum or more of the voting securities or assets of the acquired person, or

(B) an aggregate total amount of the voting securities and assets of the acquired person in excess of $15,000,000.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d) of this section.

(b) Waiting period; publication; voting securities

(1) The waiting period required under subsection (a) of this section shall—

(A) begin on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereinafter referred to in this section as the "Assistant Attorney General") of—

(i) the completed notification required under subsection (a) of this section, or

(ii) if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance,

from both persons, or, in the case of a tender offer, the acquiring person; and

(B) end of the thirtieth day after the date of such receipt (or in the case of a cash tender offer, the fifteenth day), or on such later date as may be set under subsection (e)(2) or (g)(2) of this section.

(2) The Federal Trade Commission and the Assistant Attorney General may, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the Federal Register a notice that neither intends to take any action within such period with respect to such acquisition.

(3) As used in this section—

(A) The term "voting securities" means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.

(B) The amount or percentage of voting securities or assets of a person which are acquired or held by another person shall be determined by aggregating the amount or percentage of such voting securities or assets held or acquired by such other person and each affiliate thereof.

(c) Exempt transactions

The following classes of transactions are exempt from the requirements of this section—

(1) acquisitions of goods or realty transferred in the ordinary course of business;

(2) acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;

(3) acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisition;

(4) transfers to or from a Federal agency or a State or political subdivision thereof;

(5) transactions specifically exempted from the antitrust laws by Federal statute;

(6) transactions specifically exempted from the antitrust laws by Federal statute if approved by a Federal agency, if copies of all information and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;

(7) transactions which require agency approval under section 1828(c) of title 12, or section 1842 of title 12;

(8) transactions which require agency approval under section 1843 of title 12, section 1726 or 1730a(e) of title 12, or section 1464 of title 12, if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction;

(9) acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;

(10) acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer;

(11) acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, of (A) voting securities pursuant to a plan of reorganization or dissolution; or (B) assets in the ordinary course of its business; and

(12) such other acquisitions, transfers, or transactions, as may be exempted under subsection (d)(2)(B) of this section.

(d) Commission rules

The Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5, consistent with the purposes of this section—

(1) shall require that the notification required under subsection (a) of this section be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisition may, if consummated, violate the antitrust laws; and

(2) may—

(A) define the terms used in this section;

(B) exempt, from the requirements of this section, classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws; and

(C) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.

(e) Additional information; waiting period extensions

(1) The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section, require the submission of additional information or documentary material relevant to the proposed acquisition, from a person required to file notification with respect to such acquisition under subsection (a) of this section prior to the expiration of the waiting period specified in subsection (b)(1) of this section, or from any officer, director, partner, agent, or employee of such person.

(2) The Federal Trade Commission or the Assistant Attorney General, in its or his discretion, may extend the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section for an additional period of not more than 20 days (or in the case of a cash tender offer, 10 days) after the date on which the Federal Trade Commission or the Assistant Attorney General, as the case may be, receives from any person to whom a request is made under paragraph (1), or in the case of tender offers, the acquiring person, (A) all the information and documentary material required to be submitted pursuant to such a request, or (B) if such request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance. Such additional period may be further extended only by the United States district court, upon an application by the Federal Trade Commission or the Assistant Attorney General pursuant to subsection (g)(2) of this section.

(f) Preliminary injunctions; hearings

If a proceeding is instituted or an action is filed by the Federal Trade Commission, alleging that a proposed acquisition violates section 18 of this title, or section 45 of this title, or an action is filed by the United States, alleging that a proposed acquisition violates such section 18 of this title, or section 1 or 2 of this title, and the Federal Trade Commission or the Assistant Attorney General (1) files a motion for a preliminary injunction against consummation of such acquisition pendente lite, and (2) certifies to the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection—

(A) upon the filing of such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in which such district court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes; and

(B) the motion for a preliminary injunction shall be set down for hearing by the district judge so designated at the earliest practicable time, shall take precedence over all matters except older matters of the same character and trials pursuant to section 3161 of title 18, and shall be in every way expedited.

(g) Civil penalty; compliance; power of court

(1) Any person, or any officer, director, or partner thereof, who fails to comply with any provision of this section shall be liable to the United States for a civil penalty of not more than $10,000 for each day during which such person is in violation of this section. Such penalty may be recovered in a civil action brought by the United States.

(2) If any person, or any officer, director, partner, agent, or employee thereof, fails substantially to comply with the notification requirement under subsection (a) of this section or any request for the submission of additional information or documentary material under subsection (e)(1) of this section within the waiting period specified in subsection (b)(1) of this section and as may be extended under subsection (e)(2) of this section, the United States district court—

(A) may order compliance;

(B) shall extend the waiting period specified in subsection (b)(1) of this section and as may have been extended under subsection (e)(2) of this section until there has been substantial compliance, except that, in the case of a tender offer, the court may not extend such waiting period on the basis of a failure, by the person whose stock is sought to be acquired, to comply substantially with such notification requirement or any such request; and

(C) may grant such other equitable relief as the court in its discretion determines necessary or appropriate,

upon application of the Federal Trade Commission or the Assistant Attorney General.

(h) Disclosure exemption

Any information or documentary material filed with the Assistant Attorney General or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

(i) Construction with other laws

(1) Any action taken by the Federal Trade Commission or the Assistant Attorney General or any failure of the Federal Trade Commission or the Assistant Attorney General to take any action under this section shall not bar any proceeding or any action with respect to such acquisition at any time under any other section of this Act or any other provision of law.

(2) Nothing contained in this section shall limit the authority of the Assistant Attorney General or the Federal Trade Commission to secure at any time from any person documentary material, oral testimony, or other information under the Antitrust Civil Process Act [15 U.S.C. 1311 et seq.], the Federal Trade Commission Act [15 U.S.C. 41 et seq.], or any other provision of law.

(j) Report to Congress; legislative recommendations

Beginning not later than January 1, 1978, the Federal Trade Commission, with the concurrence of the Assistant Attorney General, shall annually report to the Congress on the operation of this section. Such report shall include an assessment of the effects of this section, of the effects, purpose, and need for any rules promulgated pursuant thereto, and any recommendations for revisions of this section.

(Oct. 15, 1914, ch. 323, §7A, as added Sept. 30, 1976, Pub. L. 94-435, title II, §201, 90 Stat. 1390.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsecs. (c), (d), are defined in section 12 of this title.

This Act, referred to in subsec. (i)(1), means act of October 15, 1914, which is known as the Clayton Act, and is classified to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor.

The Federal Trade Commission Act, referred to in subsec. (i)(2), is classified to subchapter I (§41 et seq.) of chapter 2 of this title.

The Antitrust Civil Process Act, referred to in subsec. (i)(2), is classified generally to chapter 34 (§1311 et seq.) of this title. For complete classification of this Act to the Code, see Tables volume.

EFFECTIVE DATE

Section 202 of Pub. L. 94-435 provided that: "The amendment made by section 201 of this Act [enacting this section] shall take effect 150 days after the date of enactment of this Act [Sept. 30, 1976], except that subsection (d) of section 7A of the Clayton Act [subsec. (d) of this section] (as added by section 201 of this Act) shall take effect on the date of enactment of this Act [Sept. 30, 1976]."

§19. Interlocking directorates and officers

No private banker or director, officer, or employee of any member bank of the Federal Reserve System or any branch thereof shall be at the same time a director, officer, or employee of any other bank, banking association, savings bank, or trust company organized under the National Bank Act [12 U.S.C. 21 et seq.] or organized under the laws of any State or of the District of Columbia, or any branch thereof, except that the Board of Governors of the Federal Reserve System may by regulation permit such service as a director, officer, or employee of not more than one other such institution or branch thereof; but the foregoing prohibition shall not apply in the case of any one or more of the following or any branch thereof:

(1) A bank, banking association, savings bank, or trust company, more than 90 per centum of the stock of which is owned directly or indirectly by the United States or by any corporation of which the United States directly or indirectly owns more than 90 per centum of the stock.

(2) A bank, banking association, savings bank, or trust company which has been placed formally in liquidation or which is in the hands of a receiver, conservator, or other official exercising similar functions.

(3) A corporation, principally engaged in international or foreign banking or banking in a dependency or insular possession of the United States which has entered into an agreement with the Board of Governors of the Federal Reserve System pursuant to section 25 of the Federal Reserve Act, as amended [12 U.S.C. 601 et seq.].

(4) A bank, banking association, savings bank, or trust company, more than 50 per centum of the common stock of which is owned directly or indirectly by persons who own directly or indirectly more than 50 per centum of the common stock of such member bank.

(5) A bank, banking association, savings bank, or trust company not located and having no branch in the same city, town, or village as that in which such member bank or any branch thereof is located, or in any city, town, or village contiguous or adjacent thereto.

(6) A bank, banking association, savings bank, or trust company not engaged in a class or classes of business in which such member bank is engaged.

(7) A mutual savings bank having no capital stock.

Until February 1, 1939, nothing in this section shall prohibit any director, officer, or employee of any member bank of the Federal Reserve System, or any branch thereof, who is lawfully serving at the same time as a private banker or as a director, officer, or employee of any other bank, banking association, savings bank, or trust company, or any branch thereof, on August 23, 1935, from continuing such service.

The Board of Governors of the Federal Reserve System is authorized and directed to enforce compliance with this section, and to prescribe such rules and regulations as it deems necessary for that purpose.

No person at the same time shall bė a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than $1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies, and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of this election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

(Oct. 15, 1914, ch. 323, § 8, 38 Stat. 732; May 15, 1916, ch. 120, 39 Stat. 121; May 26, 1920, ch. 206, 41 Stat. 626; Mar. 9, 1928, ch. 165, 45 Stat. 253; Mar. 2, 1929, ch. 581, 45 Stat. 1536; Aug. 23, 1935, ch. 614, § 329, 49 Stat. 717.)

REFERENCES IN TEXT

The National Bank Act, referred to in text, is classified generally to chapter 2 (§ 21 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see References in Text note set out under section 38 of Title 12.

The Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven referred to in text, is known as the Interstate Commerce Act, and is classified to chapters 1 (§ 1 et seq.), 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (§ 1231 et seq.) of Title 49, Transportation.

Section 25 of the Federal Reserve Act, as amended, referred to in subpara. (3), is classified to subchapter I [§ 601 et seq.] of chapter 6 of Title 12.

This Act, referred to in text, is the Act of Oct. 15, 1914, known as the Clayton Act. For classification of the Act to the Code, see References in Text note under section 12 of this title.

AMENDMENTS

1935—Act Aug. 23, 1935, substituted first three paragraphs for the former provisions on the subject.

1929—Act Mar. 2, 1929, amended former second paragraph.

1928—Act Mar. 9, 1928, amended former second paragraph.

CROSS REFERENCES

Administrative authority to enforce compliance with this section, see section 21 of this title.

Atomic energy licenses, antitrust provisions governing, see section 2135 of Title 42, The Public Health and Welfare.

Injunctive relief for private parties, see section 26 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 26 of this title.

§ 19a. Repealed. Aug. 23, 1935, ch. 614, § 329, 49 Stat. 717

Section, act Oct. 15, 1914, ch. 323, § 8a, as added June 16, 1933, ch. 89, § 33, 48 Stat. 194, related to interlocking corporations or partnerships making loans on securities.

§ 20. Purchases by common carriers in case of interlocking directorates, etc.

No common carrier engaged in commerce shall have any dealings in securities, supplies, or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than $50,000, in the aggregate, in any one year, with another corporation, firm, partnership, or association when the said common carrier shall have upon its board of directors or as its president, manager, or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership, or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors, and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding, or shall do any act to prevent free and fair competition among the bidders or those desiring to bid, shall be punished as prescribed in this section in the case of an officer or director.

Every such common carrier having any such transactions or making any such purchases shall, within thirty days after making the same, file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions, it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

If any common carrier shall violate this section, it shall be fined not exceeding $25,000; and every such director, agent, manager, or officer thereof who shall have knowingly voted for or directed the act constituting such violation, or who shall have aided or abetted in such violation, shall be deemed guilty of a misdemeanor and shall be fined not exceeding $5,000 or confined in jail not exceeding one year, or both, in the discretion of the court.

(Oct. 15, 1914, ch. 323, § 10, 38 Stat. 734.)

CROSS REFERENCES

Misdemeanor, offense punishable by imprisonment not exceeding one year as, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 21. Enforcement provisions

(a) Commissions and Boards authorized to enforce compliance

Authority to enforce compliance with sections 13, 14, 18, and 19 of this title by the persons respectively subject thereto is vested in the Interstate Commerce Commission where applicable to common carriers subject to the Interstate Commerce Act, as amended; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the Civil Aeronautics Board where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938; in the Board of Governors of the Federal Reserve System where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce to be exercised as follows:

(b) Issuance of complaints for violations; hearing; intervention; filing of testimony; report; cease and desist orders; reopening and alteration of reports or orders

Whenever the Commission or Board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections 13, 14, 18, and 19 of this title, it shall issue and serve upon such person and the Attorney General a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission or Board requiring such person to cease and desist from the violation of the law so charged in said complaint. The Attorney General shall have the right to intervene and appear in said proceeding and any person may make application, and upon good cause shown may be allowed by the Commission or Board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission or Board. If upon such hearing the Commission or Board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock, or other share capital, or assets, held or rid itself of the directors chosen contrary to the provisions of sections 18 and 19 of this title, if any there be, in the manner and within the time fixed by said order. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission or Board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission or Board may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission or Board conditions of fact or of law have so changed as to require such action or if the public interest shall so require: *Provided, however,* That the said person may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section.

(c) Review of orders; jurisdiction; filing of petition and record of proceeding; conclusiveness of findings; additional evidence; modification of findings; finality of judgment and decree

Any person required by such order of the commission or board to cease and desist from any such violation may obtain a review of such order in the court of appeals of the United States for any circuit within which such violation occurred or within which such person resides or carries on business, by filing in the court, within sixty days after the date of the service of such order, a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the commission or board, and thereupon the commission or board shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the commission or board until the filing of the record, and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the commission or board, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the commission or board as to the facts, if supported by substantial evidence, shall be conclusive. To the extent that the order of the commission or board is affirmed, the court shall issue its own order commanding obedience to the terms of such order of the commission or board. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and shall file such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(d) Exclusive jurisdiction of Court of Appeals

Upon the filing of the record with its jurisdiction of the court of appeals to affirm, enforce, modify, or set aside orders of the commission or board shall be exclusive.

(e) Preference; liability under antitrust laws

Such proceedings in the court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or judgment of the court to enforce the same shall in anywise relieve or absolve any person from any liability under the antitrust laws.

(f) Service of complaints, orders and other processes

Complaints, orders, and other processes of the commission or board under this section may be serviced by anyone duly authorized by the commission or board, either (1) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (2) by leaving a copy thereof at the residence or the principal office or place of business of such person; or (3) by mailing by registered or certified mail a copy thereof addressed to such person at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered or certified mail as aforesaid shall be proof of the service of the same.

(g) Finality of orders generally

Any order issued under subsection (b) of this section shall become final—

(1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the commission or board may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b) of this section; or

(2) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the commission or board has been affirmed, or the petition for review has been dismissed by the court of appeals, and no petition for certiorari has been duly filed; or

(3) upon the denial of a petition for certiorari, if the order of the commission or board has been affirmed or the petition for review has been dismissed by the court of appeals; or

(4) upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the commission or board be affirmed or the petition for review be dismissed.

(h) Finality of orders modified by Supreme Court

If the Supreme Court directs that the order of the commission or board be modified or set aside, the order of the commission or board rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the commission or board shall become final when so corrected.

(i) Finality of orders modified by Court of Appeals

If the order of the commission or board is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court then the order of the commission or board rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the commission or board was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the commission or board shall become final when so corrected.

(j) Finality of orders issued on rehearing ordered by Court of Appeals or Supreme Court

If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the commission or board for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the commission or board rendered upon such rehearing shall become final in the same manner as though no prior order of the commission or board had been rendered.

(k) Definition of mandate

As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(*l*) Penalties

Any person who violates any order issued by the commission or board under subsection (b) of this section after such order has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $5,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States. Each separate violation of any such order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the commission or board each day of continuance of such failure or neglect shall be deemed a separate offense.

(Oct. 15, 1914, ch. 323, § 11, 38 Stat. 734; June 19, 1934, ch. 652, § 602(d), 48 Stat. 1102; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704; June 23, 1938, ch. 601, § 1107(g), 52 Stat. 1028; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Dec. 29, 1950, ch. 1184, 64 Stat. 1125; Aug. 23, 1958, Pub. L. 85-726, title XIV, § 1401(b), 72 Stat. 806; Aug. 28, 1958, Pub. L. 85-791, § 4, 72 Stat. 943; July 23, 1959, Pub. L. 86-107, § 1, 73 Stat. 243.)

REFERENCES IN TEXT

The Interstate Commerce Act, as amended, referred to in subsec. (a), is classified to chapters 1 (§ 1 et seq.), 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (§ 1231 et seq.) of Title 49, Transportation.

The Civil Aeronautics Act of 1938, referred to in subsec. (a), is act June 23, 1938, ch. 601, 52 Stat. 973, which was repealed by Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806, and is now covered by section 1301 et seq. of Title 49, Transportation.

The antitrust laws, referred to in subsec. (e), are defined in section 12 of this title.

AMENDMENTS

1959—Pub. L. 86-107 amended section generally, and among other changes, authorized the Commission or Board, upon notice and opportunity for hearing, in cases where a petition for review has not been filed within the time allowed, to reopen and alter, modify, or set aside, in whole or in part, any report or order, whenever conditions of fact or law have so changed as to require such action or if the public interest so requires, and added subsecs. (g) to (k), providing for finality of orders, and subsec. (*l*), prescribing the civil penalty for violation of orders.

1958—Pub. L. 85-791, § 4(a), eliminated "a transcript of" following "Until" in last sentence of second paragraph.

Pub. L. 85-791, § 4(b), substituted in first sentence of third paragraph, "file the record in the proceeding, as provided in section 2112 of title 28" for "certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the Commission or Board", and in second sentence of third paragraph, eliminated "and transcript" following "application", inserted "concurrently with the Commission or Board until the filing of the record", and eliminated "upon the pleadings, testimony, and proceedings set forth in such transcript" following "make and enter".

Pub. L. 85-791, § 4(c), substituted in second sentence of fourth paragraph, "transmitted by the clerk of the court to" for "served upon" and "shall file in the court the record in the proceeding, as provided in section 2112 of title 28" for "forthwith shall certify and file in the court a transcript of the record in the proceeding, as hereinbefore provided", and in third sentence of fourth paragraph substituted "such petition" for "the transcript" and inserted "determined as provided in section 1009(e) of title 5,".

Pub. L. 85-791, § 4(d), substituted in fifth paragraph, "Upon the filing of the record with it the" for "The".

1950—Act Dec. 29, 1950, amended section generally to allow the Attorney General to intervene and appear in any proceeding brought by any Commission or Board to enforce sections 13, 14, 18, and 19 of this title, but the amendment in nowise affects the jurisdiction of the Department of Justice to enforce these sections in the courts.

1938—Act June 23, 1938, inserted "in the Civil Aeronautics Authority where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938" and the word "authority" after "commission" wherever appearing in text.

1935—Act Aug. 23, 1935, changed the name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

1934—Act June 19, 1934, amended first paragraph.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

EFFECTIVE DATE OF 1959 AMENDMENT

Section 2 of Pub. L. 86-107 provided that: "The amendments made by section 1 [to this section] shall have no application to any proceeding initiated before the date of enactment of this Act [July 23, 1959] under the third or fourth paragraph of section 11 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914 (38 Stat. 734, as amended; 15 U.S.C. 21) [this section]. Each such proceeding shall be governed by the provisions of such section as they existed on the day preceding the date of enactment of this Act [July 23, 1959]."

REPEALS

Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806, repealed act June 23, 1938, ch. 601, § 1107(g), 52 Stat. 1028, cited to the credit of this section.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

CROSS REFERENCES

Jurisdiction and powers of Federal Trade Commission, see sections 45 and 46 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21a of this title.

§ 21a. Actions and proceedings pending prior to June 19, 1936; additional and continuing violations

Nothing herein contained shall affect rights of action arising, or litigation pending, or orders of the Federal Trade Commission issued and in effect or pending on review, based on section 13 of this title, prior to June 19, 1936: *Provided,* That where, prior to June 19, 1936, the Federal Trade Commission has issued an order requiring any person to cease and desist from a violation of section 13 of this title, and such order is pending on review or is in effect, either as issued or as affirmed or modified by a court of competent jurisdiction, and the Commission shall have reason to believe that such person has committed, used or carried on, since

June 19, 1936, or is committing, using or carrying on, any act, practice or method in violation of any of the provisions of said section 13 of this title, it may reopen such original proceedings and may issue and serve upon such person its complaint, supplementary to the original complaint, stating its charges in that respect. Thereupon the same proceedings shall be had upon such supplementary complaint as provided in section 21 of this title. If upon such hearing the Commission shall be of the opinion that any act, practice, or method charged in said supplementary complaint has been committed, used, or carried on since June 19, 1936, or is being committed, used or carried on, in violation of said section 13 of this title, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and serve upon such person its order modifying or amending its original order to include any additional violations of law so found. Thereafter the provisions of section 21 of this title, as to review and enforcement of orders of the Commission shall in all things apply to such modified or amended order. If upon review as provided in said section 21 of this title the court shall set aside such modified or amended order, the original order shall not be affected thereby, but it shall be and remain in force and effect as fully and to the same extent as if such supplementary proceedings had not been taken.

(June 19, 1936, ch. 592, § 2, 49 Stat. 1527.)

REFERENCES IN TEXT

Nothing herein contained, referred to in text, probably means nothing contained in the Act of June 19, 1936, known as the Robinson-Patman Antidiscrimination Act. For classification of the Act to the Code, see Short Title note under section 13 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

CROSS REFERENCES

Exemptions of non-profit institutions from provisions of this section, see section 13c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 7430.

§ 22. District in which to sue corporation

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

(Oct. 15, 1914, ch. 323, § 12, 38 Stat. 736.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

CROSS REFERENCES

Venue—
  Generally, see section 1391 et seq. of Title 28, Judiciary and Judicial Procedure.
  Damage actions, see section 15 of this title.

FEDERAL RULES OF APPELLATE PROCEDURE

Rules not to be construed as extending or limiting jurisdiction of Court of Appeals, see rule 1, Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

One form of action, see rule 2, Title 28, Appendix, Judiciary and Judicial Procedure.

Process, see rule 4.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1.

§ 23. Suits by United States; subpoenas for witnesses

In any suit, action, or proceeding brought by or on behalf of the United States subpoenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district: *Provided*, That in civil cases no writ of subpoena shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

(Oct. 15, 1914, ch. 323, § 13, 38 Stat. 736.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

One form of action, see rule 2, Title 28, Appendix, Judiciary and Judicial Procedure.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1.

Subpoena, see rule 45.

FEDERAL RULES OF CRIMINAL PROCEDURE

Subpoena, see rule 17, Title 18, Appendix, Crimes and Criminal Procedure.

§ 24. Liability of directors and agents of corporation

Whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding $5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

(Oct. 15, 1914, ch. 323, § 14, 38 Stat. 736.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

CROSS REFERENCES

Misdemeanor, offense punishable by imprisonment not exceeding one year as, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 25. Restraining violations; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

(Oct. 15, 1914, ch. 323, § 15, 38 Stat. 736; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

References in Text

This Act, referred to in text, means the Act of Oct. 15, 1914, which is known as the Clayton Act. For classification of the Act to the Code, see References in Text note under section 12 of this title.

Change of Name

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys of the United States". See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

Cross References

Restraining violations of trusts in restraint of import trade, see section 9 of this title.

Restraining violations of unlawful combinations and monopolies, see section 4 of this title.

Federal Rules of Appellate Procedure

Stay or injunction pending appeal, see rule 8, Title 28, Appendix, Judiciary and Judicial Procedure.

Federal Rules of Civil Procedure

Modification of section by rule 4, see note by Advisory Committee under rule 4, Title 28, Appendix, Judiciary and Judicial Procedure.

One form of action, see rule 2.

Process and injunctions, see rules 4 and 65.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1.

§ 26. Injunctive relief for private parties; exception; costs

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission. In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

(Oct. 15, 1914, ch. 323, § 16, 38 Stat. 737; Sept. 30, 1976, Pub. L. 94-435, title III, § 302(3), 90 Stat. 1396.)

References in Text

The antitrust laws, referred to in text, are defined in section 12 of this title.

The Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, referred to in text, is the Interstate Commerce Act, and is classified to chapters 1 (§ 1 et seq.), 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (§ 1231 et seq.) of Title 49, Transportation.

Amendments

1976—Pub. L. 94-435 added provision authorizing court to award costs, including attorneys' fees, to a successful plaintiff.

Cross References

Labor disputes, restriction of injunctive relief, see sections 52 and 107 of Title 29, Labor.

Venue of—
- Damage actions, see section 15 of this title.
- Proceedings against corporations, see section 22 of this title.

Federal Rules of Civil Procedure

Continuation of section under rule 65, see note by Advisory Committee under rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

Injunctions, see rule 65.

One form of action, see rule 2.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at common law or in equity, see rule 1.

§ 27. Effect of partial invalidity

If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

(Oct. 15, 1914, ch. 323, § 26, 38 Stat. 740.)

References in Text

This Act, referred to in text, means the Act of Oct. 15, 1914, which is known as the Clayton Act. For classification of the Act of the Code, see References in Text note under section 12 of this title.

§ 28. Expedition of actions by United States involving general public importance

In any civil action brought in any district court of the United States under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, wherein the United States is plaintiff and equitable relief is sought, the Attorney General may file with the court, prior to the entry of final judgment, a certificate that, in his opinion, the case is of a general public importance. Upon filing of such certificate, it shall be the duty of the judge designated to hear and determine the case, or the chief judge of the district court if no judge has as yet been designated, to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(Feb. 11, 1903, ch. 544, § 1, 32 Stat. 823; June 25, 1910, ch. 428, 36 Stat. 854; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Apr. 6, 1942, ch. 210, § 1, 56 Stat. 198; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Dec. 21, 1974, Pub. L. 93-528, § 4, 88 Stat. 1708.)

REFERENCES IN TEXT

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, referred to in text, is known as the Sherman Act, and is classified to sections 1 to 7 of this title.

CODIFICATION

Act Mar. 3, 1911, which transferred the powers and duties of the circuit courts to the district courts, substituted "district court" for "circuit court".

Act June 25, 1910, added provisions for designation of district judges to sit in case full court is not made up due to absence or disqualification of circuit judges and for reargument in event judges sitting are equally divided in opinion.

Section was formerly set out in both this section and in section 44 of Title 49, Transportation.

AMENDMENTS

1974—Pub. L. 93-528 struck out reference to the Act to regulate commerce approved Feb. 4, 1887, limited the application of the section to civil actions where equitable relief is sought, substituted provisions requiring filing of certificate with the court for provisions requiring filing of such certificate with the clerk of the court and requiring the clerk to furnish a copy of the certificate to the chief judge of the circuit of the circuit in which the case was pending, and further substituted "Upon filing of such certificate, it shall be the duty of the judge designated to hear and determine the case, or the chief judge of the district court if no judge has yet been designated, to assign the case for hearing at the earliest practicable date and" for "Upon receipt of the copy of such certificate, it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and".

1942—Act Apr. 6, 1942, amended section generally.

SHORT TITLE

Act Feb. 11, 1903, which enacted this section and section 29 of this title, and sections 44 and 45 of Title 49, Transportation, is commonly known as the "Expediting Act".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "chief judge of the circuit" for "senior circuit judge".

PENDING CASES, EFFECT OF 1942 AMENDMENT

Section 2 of act Apr. 6, 1942, provided that the amendment made by section 1 of this Act [amending this section] was not to apply to any case with respect to which the Attorney General had filed a certificate prior to the date of the enactment of this Act and in which the court had already been constituted.

CROSS REFERENCES

Composition and procedure of three-judge district court, see section 2284 of Title 28, Judiciary and Judicial Procedure.

Single judge's powers in action in three-judge district court for interlocutory injunction and final hearing under this section, see section 2284 of Title 28.

FEDERAL RULES OF CIVIL PROCEDURE

Assignment of cases for trial, see rule 40, Title 28, Appendix, Judiciary and Judicial Procedure.

Stay of proceedings to enforce judgment, see rule 62.

§ 29. Appeals

(a) Court of Appeals; review by Supreme Court

Except as otherwise expressly provided by this section, in every civil action brought in any district court of the United States under the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, in which the United States is the complainant and equitable relief is sought, any appeal from a final judgement entered in any such action shall be taken to the court of appeals pursuant to sections 1291 and 2107 of title 28. Any appeal from an interlocutory order entered in any such action shall be taken to the court of appeals pursuant to sections 1292(a)(1) and 2107 of title 28 but not otherwise. Any judgment entered by the court of appeals in any such action shall be subject to review by the Supreme Court upon a writ of certiorari as provided in section 1254(1) of title 28.

(b) Direct appeals to Supreme Court

An appeal from a final judgment pursuant to subsection (a) of this section shall lie directly to the Supreme Court, if, upon application of a party filed within fifteen days of the filing of a notice of appeal, the district judge who adjudicated the case enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice. Such order shall be filed within thirty days after the filing of a notice of appeal. When such an order is filed, the appeal and any cross appeal shall be docketed in the time and manner prescribed by the rules of the Supreme Court. The Supreme Court shall thereupon either (1) dispose of the appeal and any cross appeal in the same manner as any other direct appeal authorized by law, or (2) in its discretion, deny the direct appeal and remand the case to the court of appeals, which shall then have jurisdiction to hear and determine the same as if the appeal and any cross appeal therein had been docketed in the court of appeals in the first instance pursuant to subsection (a) of this section.

(Feb. 11, 1903, ch. 544, § 2, 32 Stat. 823; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 9, 1944, ch. 239, 58 Stat. 272; June 25, 1948, ch. 646, § 17, 62 Stat. 989; Dec. 21, 1974, Pub. L. 93-528, § 5, 88 Stat. 1709.)

REFERENCES IN TEXT

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, referred to in subsec. (a), is known as the Sherman Act, and is classified to sections 1 to 7 of this title.

CODIFICATION

Act Mar. 3, 1911, which transferred the powers and duties of the circuit courts to the district courts, substituted "district court" for "circuit court".

Section was formerly set out in both this section and in section 45 of Title 49, Transportation.

AMENDMENTS

1974—Pub. L. 93-528 substituted provisions for appeals to the court of appeals from civil actions in district courts where equitable relief is sought, review by the Supreme Court of judgments of courts of appeals, and for direct appeals to the Supreme Court of cases involving general public importance, for provisions that appeals from final judgments of district courts lie to the Supreme Court only.

1948—Act June 25, 1948, amended section generally to strike out provisions relating to time for appeal, procedure, etc., as being covered by sections 2101 and 2109 of Title 28, Judiciary and Judicial Procedure.

1944—Act June 9, 1944, provided for certification of case to circuit court of appeals when there was no quorum of Justices of the Supreme Court qualified to participate in the consideration of the case and for designation of circuit judges in the event of disqualification from hearing the case.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 7 of Pub. L. 93-528 provided that: "The amendment made by section 5 of this Act [amending this section] shall not apply to an action in which a notice of appeal to the Supreme Court has been filed on or before the fifteenth day following the date of enactment of this Act [Dec. 21, 1974]. Appeal in any such action shall be taken pursuant to the provisions of section 2 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 29; 49 U.S.C. 45) which were in effect on the day preceding the date of enactment of this Act."

EFFECTIVE DATE OF 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment of this section shall be effective Sept. 1, 1948.

EFFECTIVE DATE OF 1944 AMENDMENT

The last paragraph of act June 9, 1944, provided: "This Act [this section] shall apply to every case pending before the Supreme Court of the United States on the date of its enactment [June 9, 1944]."

CROSS REFERENCES

Direct appeals from decisions of three-judge courts, see section 1253 of Title 28, Judiciary and Judicial Procedure.

Time for appeal to Supreme Court, see section 2101 of Title 28.

§ 30. Depositions for use in suits in equity; proceedings open to public

In the taking of depositions of witnesses for use in any suit in equity brought by the United States under sections 1 to 7 of this title, and in the hearings before any examiner or special master appointed to take testimony therein, the proceedings shall be open to the public as freely as are trials in open court; and no order excluding the public from attendance on any such proceedings shall be valid or enforceable.

(Mar. 3, 1913, ch. 114, 37 Stat. 731.)

FEDERAL RULES OF CIVIL PROCEDURE

Depositions and discovery, see rules 26 to 37, Title 28, Appendix, Judiciary and Judicial Procedure.

Masters, see rule 53.

One form of action, see rule 2.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1312 of this title.

§ 31. Panama Canal closed to violators of antitrust laws

No vessel permitted to engage in the coastwise or foreign trade of the United States shall be permitted to enter or pass through the Panama Canal if such ship is owned, chartered, operated, or controlled by any person or company which is doing business in violation of the provisions of sections 1 to 11 of this title or of any other Act of Congress amending or supplementing the same. The question of fact may be determined by the judgment of any court of the United States of competent jurisdiction in any cause pending before it to which the owners or operators of such ship are parties. Suit may be brought by any shipper or by the Attorney General of the United States.

(Aug. 24, 1912, ch. 390, § 11, 37 Stat. 567.)

§§ 32, 33. Repealed. Pub. L. 91-452, title II, §§ 209, 210, Oct. 15, 1970, 84 Stat. 929

Section 32, act Feb. 25, 1903, ch. 755, § 1, 32 Stat. 904, granted immunity from prosecution to witnesses testifying or producing evidence, documentary or otherwise, in any proceeding, suit, or prosecution under section 1 to 11 of this title. See section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Section 33, act June 30, 1906, ch. 3920, 34 Stat. 798, provided that, under the immunity provisions of former section 32 of this title, immunity was to extend only to a natural person who, in obedience to a subpoena, testified or produced evidence.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Repeal of sections by Pub. L. 91-452 not to affect any immunity to which any individual was entitled under sections by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

CHAPTER 2—FEDERAL TRADE COMMISSION; PROMOTION OF EXPORT TRADE AND PREVENTION OF UNFAIR METHODS OF COMPETITION

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SUBCHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 18a, 64, 65, 68, 68a, 68c, 68d, 68e, 68f, 68g, 69, 69a, 69d, 69f, 69g, 69h, 70a, 70c, 70d, 70e, 70f, 70g, 70h, 636, 638, 640, 1012, 1013, 1192, 1194, 1291, 1460, 1607, 1681s, 1691c, 1802, 2006, 2079, 2101, 2103, 2106, 2311 of this title; title 10 section 7430; title 19 section 2485; title 21 section 378; title 30 section 184; title 33 section 1502; title 42 sections 2135, 5417, 5909, 6202, 6294; title 45 section 791; title 50 App. section 2158.

§ 41. Federal Trade Commission established; membership; vacancies; seal

A commission is created and established, to be known as the Federal Trade Commission (hereinafter referred to as the Commission), which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the Commissioners shall be members of the same political party. The first Commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from September 26, 1914, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed: *Provided, however*, That upon the expiration of his term of office a Commissioner shall continue to serve until his successor shall have been appointed and shall have qualified. The President shall choose a chairman from the Commission's membership. No Commissioner shall engage in any other business, vocation, or employment. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the Commission shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission.

The Commission shall have an official seal, which shall be judicially noticed.

(Sept. 26, 1914, ch. 311, § 1, 38 Stat. 717; Mar. 21, 1938, ch. 49, § 1, 52 Stat. 111; 1950 Reorg. Plan No. 8, § 3, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265.)

AMENDMENTS

1938—Act Mar. 21, 1938, added proviso clause to the third sentence.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Federal Trade Commission were, with certain reservations, transferred to the Chairman of such Commission by Reorg. Plan No. 8 of 1950, set out below.

The functions of the Federal Trade Commission (1) under the Flammable Fabrics Act [section 1191 et seq. of this title] and under this subchapter to the extent that such functions relate to the administration of the Flammable Fabrics Act, and (2) under the Act of August 2, 1956, [section 1211 et seq. of this title], were transferred to the Consumer Product Safety Commission by section 30 of Act Oct. 27, 1972, Pub. L. 92-573 [section 2079 of this title].

By section 3 of act Sept. 26, 1914, the former Bureau of Corporations was abolished, and all employees and functions of said Bureau transferred to the Federal Trade Commission.

COMPENSATION OF MEMBERS OF FEDERAL TRADE COMMISSION

Compensation of Chairman and members, see sections 5314 and 5315 of Title 5, Government Organization and Employees.

CROSS REFERENCES

Applicability of this subchapter to the insurance business, see section 1011 et seq. of this title.

Jurisdiction of Commission in enforcement of Clayton Act, see section 21 of this title.

Power of Commission under the Packers and Stockyards Act as restricted, see section 227 of Title 7, Agriculture.

REORGANIZATION PLAN NO. 8 OF 1950

Eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [see section 901 et seq. of Title 5, Government Organization and Employees].

FEDERAL TRADE COMMISSION

§ 1. TRANSFER OF FUNCTIONS TO THE CHAIRMAN

(a) Subject to the provisions of subsection (b) of this section, there are hereby transferred from the Federal Trade Commission, hereinafter referred to as the Commission, to the Chairman of the Commission, hereinafter referred to as the Chairman, the executive and administrative functions of the Commission, including functions of the Commission with respect to (1) the appointment and supervision of personnel employed under the Commission, (2) the distribution of business among such personnel and among administrative units of the Commission, and (3) the use and expenditure of funds.

(b)(1) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(2) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(3) Personnel employed regularly and full time in the immediate offices of members of the Commission other than the Chairman shall not be affected by the provisions of this reorganization plan.

(4) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

§ 2. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Chairman may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any function transferred to the Chairman by the provisions of this reorganization plan.

§ 3. DESIGNATION OF CHAIRMAN

The functions of the Commission with respect to choosing a Chairman from among the membership of the Commission are hereby transferred to the President.

REORGANIZATION PLAN NO. 4 OF 1961

Eff. July 9, 1961, 26 F.R. 6191, 75 Stat. 837

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 9, 1961, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see section 901 et seq. of Title 5].

FEDERAL TRADE COMMISSION

SECTION 1. AUTHORITY TO DELEGATE

(a) In addition to its existing authority, the Federal Trade Commission, hereinafter referred to as the "Commission", shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter; *Provided, however*, That nothing herein contained shall be deemed to supersede the provisions of section 7(a) of the Administrative Procedure Act (60 Stat. 241), as amended [section 556 of Title 5].

(b) With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, upon its own initiative or upon petition of a party to or an intervenor in such action, within such time and in such manner as the Commission shall by rule prescribe: *Provided, however*, That the vote of a majority of the Commission less one member thereof shall be sufficient to bring any such action before the Commission for review.

(c) Should the right to exercise such discretionary review be declined, or should no such review be sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Commission.

SEC. 2. TRANSFER OF FUNCTIONS TO THE CHAIRMAN

In addition to the functions transferred by the provisions of Reorganization Plan No. 8 of 1950 (64 Stat. 1264) [set out as a note under this section], there are hereby transferred from the Commission to the Chairman of the Commission the functions of the Commission with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to Commission personnel, including Commissioners, pursuant to section 1 of this reorganization plan.

§ 42. Employees; expenses

Each commissioner shall receive a salary, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

With the exception of the secretary, a clerk to each Commissioner, the attorneys, and such special experts and examiners as the Commission may from time to time find necessary for the conduct of its work, all employees of the Commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the Commission and by the Civil Service Commission.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission.

Until otherwise provided by law, the Commission may rent suitable offices for its use.

The General Accounting Office shall receive and examine all accounts of expenditures of the Commission.

(Sept. 26, 1914, ch. 311, § 2, 38 Stat. 718; June 10, 1921, ch. 18, § 304, 42 Stat. 24.)

REFERENCES IN TEXT

The "classified civil service", referred to in the second par., means the "competitive service", see section 2102 of Title 5, Government Organization and Employees. Rules and regulations of the Civil Service Commission for entry into the service are prescribed generally under authority of section 3301 et seq. of Title 5.

CODIFICATION

In the first par., provisions that fixed the salary of the commissioners have been omitted as obsolete. The positions of chairman and members of the commission are now under the Executive Schedule, see sections 5414 and 5315 of Title 5, Government Organization and Employees.

Provisions that fixed the salary of the secretary of the commission, payable in like manner, have been omitted as obsolete. The position is now subject to chapter 51 and subchapter III of chapter 53 (relating to classification and General Schedule pay rates) and section 5504 (relating to biweekly pay periods) of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such Commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§ 43. Office and place of meeting

The principal office of the Commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The Commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

(Sept. 26, 1914, ch. 311, § 3, 38 Stat. 719.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§ 44. Definitions

The words defined in this section shall have the following meaning when found in this subchapter, to wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" shall be deemed to include any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members, and has shares of capital or capital stock or certificates of interest, and any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" includes all documents, papers, correspondence, books of account, and financial and corporate records.

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce", approved February 14, 1887 and all Acts amendatory thereof and supplementary thereto and the Communications Act of 1934 [47 U.S.C. 151 et seq.] and all Acts amendatory thereof and supplementary thereto.

"Antitrust Acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890; also sections 73 to 77, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894; also the Act entitled "An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes' ", approved February 12, 1913; and also the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914.

(Sept. 26, 1914, ch. 311, § 4, 38 Stat. 719; Mar. 21, 1938, ch. 49, § 2, 52 Stat. 111.)

References in Text

An Act to regulate commerce, approved February 14, 1887, referred to in text, means the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, which is known as the Interstate Commerce Act, and is classified to chapters 1 (§ 1 et seq.), 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (§ 1231 et seq.) of Title 49, Transportation.

The Communications Act of 1934, referred to in text, is act June 19, 1934, ch. 652, 48 Stat. 1064, which is classified generally to chapter 5 (§ 151 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see Codification note set out under section 609 of Title 47 and Tables volume.

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, referred to in the text, is known as the Sherman Act, and is classified to sections 1 to 7 of this title.

Sections 73 to 77, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894, referred to in text, are known as the Wilson Tariff Act. Sections 73 to 76 are classified to sections 8 to 11 of this title, and section 77 was not classified to the Code.

Act February 12, 1913, is set out as amendments to sections 8 and 11 of this title.

The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, referred to in text, is the Clayton Act. For classification of the Act to the Code, see "References in Text" note set out under section 12 of this title.

Amendments

1938—Act Mar. 21, 1938, amended section generally.

Cross References

Additional definitions, see sections 45 and 55 of this title.

Section Referred to in Other Sections

This section is referred to in section 756 of this title.

§ 45. Unfair methods of competition unlawful; prevention by Commission

(a) Declaration of unlawfulness; power to prohibit unfair practices

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.

(2) The Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958 [49 U.S.C. 1301 et seq.], and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended [7 U.S.C. 181 et seq.], except as provided in section 406(b) of said Act [7 U.S.C. 227(a)], from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

(b) Proceeding by Commission; modifying and setting aside orders

Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this subchapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require: *Provided, however,* That the said person, partnership, or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section.

(c) Review of order; rehearing

Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the Commission until the filing of the record and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgement to prevent injury to the public or to competitors pendente lite. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(d) Jurisdiction of court

Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive.

(e) Precedence of proceedings; exemption from liability

Such proceedings in the court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the Commission or judgement of court to enforce the same shall in anywise relieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts.

(f) Service of complaints, orders and other processes; return

Complaints, orders, and other processes of the Commission under this section may be served by anyone duly authorized by the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership, or corporation; or (c) by mailing a copy thereof by registered mail or by certified mail addressed to such person, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered mail or by certified mail as aforesaid shall be proof of the service of the same.

(g) Finality of order

An order of the Commission to cease and desist shall become final—

(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the Commission may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b); or

(2) Upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed, or the petition for review dismissed by the court of appeals, and no petition for certiorari has been duly filed; or

(3) Upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review dismissed by the court of appeals; or

(4) Upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Commission be affirmed or the petition for review dismissed.

(h) Modification or setting aside of order by Supreme Court

If the Supreme Court directs that the order of the Commission be modified or set aside, the order of the Commission rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(i) Modification or setting aside of order by Court of Appeals

If the order of the Commission is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the Commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(j) Rehearing upon order or remand

If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the Commission for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered upon such rehearing shall become final in the same manner as though no prior order of the Commission had been rendered.

(k) Definition of mandate

As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(*l*) Penalty for violation of order; injunctions and other appropriate equitable relief

Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States. Each separate violation of such an order shall be a separate offense, except that in a case of a violation through continuing failure to obey or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission.

(m) Civil actions for recovery of penalties for knowing violations of rules and cease and desist orders respecting unfair or deceptive acts or practices; jurisdiction; maximum amount of penalties; continuing violations; de novo determinations; compromise or settlement procedure

(1)(A) The Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person, partnership, or corporation which violates any rule under this chapter respecting unfair or deceptive acts or practices (other than an interpretive rule or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of subsection (a)(1) of this section) with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule. In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than $10,000 for each violation.

(B) If the Commission determines in a proceeding under subsection (b) of this section that any act or practice is unfair or deceptive, and issues a final cease and desist order with respect to such act or practice, then the Commission may commence a civil action to obtain a civil penalty in a district court of the United States against any person, partnership, or corporation which engages in such act or practice—

(1) after such cease and desist order becomes final (whether or not such person, partnership, or corporation was subject to such cease and desist order), and

(2) with actual knowledge that such act or practice is unfair or deceptive and is unlawful under subsection (a)(1) of this section.

In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than $10,000 for each violation.

(C) In the case of a violation through continuing failure to comply with a rule or with subsection (a)(1) of this section, each day of continuance of such failure shall be treated as a separate violation, for purposes of subparagraphs (A) and (B). In determining the amount of such a civil penalty, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) If the cease and desist order establishing that the act or practice is unfair or deceptive was not issued against the defendant in a civil penalty action under paragraph (1)(B) the issues of fact in such action against such defendant shall be tried de novo.

(3) The Commission may compromise or settle any action for a civil penalty if such compromise or settlement is accompanied by a public statement of its reasons and is approved by the court.

(Sept. 26, 1914, ch. 311, § 5, 38 Stat. 719; Mar. 21, 1938, ch. 49, § 3, 52 Stat. 111; June 23, 1938, ch. 601, 52 Stat. 977; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Mar. 16, 1950, ch. 61, § 4(c), 64 Stat. 21; July 14, 1952, ch. 745, § 2, 66 Stat. 632; Aug. 23, 1958, Pub. L. 85-726, title XIV,

§§ 1401(b), 1411, 72 Stat. 806, 809; Aug. 28, 1958, Pub. L. 85-791, § 3, 72 Stat. 942; Sept. 2, 1958, Pub. L. 85-909, § 3, 72 Stat. 1750; June 11, 1960, Pub. L. 86-507, § 1(13), 74 Stat. 200; Nov. 16, 1973, Pub. L. 93-153, title IV, § 408(c), (d), 87 Stat. 591, 592; Jan. 4, 1975, Pub. L. 93-637, title II, §§ 201(a), 204(b), 205(a), 88 Stat. 2193, 2200; Dec. 12, 1975, Pub. L. 94-145, § 3, 89 Stat. 801.)

References in Text

The "Acts to regulate commerce", referred to in subsec. (a)(2), are defined in section 44 of this title.

The Federal Aviation Act of 1958, referred to in subsec. (a)(2), is Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 737, which is classified generally to chapter 20 (§ 1301 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 49 and Tables volume.

The Packers and Stockyards Act, 1921, as amended, referred to in subsec. (a)(2), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, which is classified to chapter 9 (§ 181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables volume.

The "Antitrust Acts", referred to in subsec. (e), are defined in section 44 of this title.

Codification

In subsec. (c), "section 1254 of title 28" was substituted for "section 240 of the Judicial Code [28 U.S.C. 347]" on authority of Act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

Amendments

1975—Pub. L. 93-637, § 201(a), substituted "in or affecting commerce" for "in commerce" wherever appearing therein.

Subsec. (a). Pub. L. 94-145 deleted pars. (2) to (5) which permitted fair trade pricing of articles for retail sale and State enactment of nonsigner provisions, and redesignated former par. (6) as (2).

Subsec. (m). Pub. L. 93-637, §§ 204(b), 205(a), added subsec. (m). Former subsec. (m), relating to the election by the Commission to appear in its own name after notifying and consulting with and giving the Attorney General 10 days to take the action proposed by the Commission, was stricken out.

1973—Subsec. (*l*). Pub. L. 93-153, § 408(c), raised the maximum civil penalty for each violation to $10,000 and added provisions empowering the United States District Courts to grant mandatory injunctions and such other and further equitable relief as they might deem appropriate for the enforcement of final Commission orders.

Subsec. (m). Pub. L. 93-153, § 408(d), added subsec. (m).

1960—Subsec. (f). Pub. L. 86-507 substituted "mailing a copy thereof by registered mail or by certified mail" for "registering and mailing a copy thereof", and "mailed by registered mail or by certified mail" for "registered and mailed".

1958—Subsec. (a)(6). Pub. L. 85-909 substituted "persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended," for "persons, partnerships or corporations subject to the Packers and Stockyards Act, 1921,".

Pub. L. 85-726 substituted "Federal Aviation Act of 1958" for "Civil Aeronautics Act of 1938".

Subsec. (b). Pub. L. 85-791, § 3(a), eliminated "the transcript of" preceding "the record in the proceeding" in the sixth sentence.

Subsec. (c). Pub. L. 85-791, § 3(b), in the second sentence, substituted "transmitted by the clerk of the court to" for "served upon", and "Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28" for "Commission forthwith shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the Commission", and which, in the third sentence eliminated "and transcript" following "petition", inserted "concurrently with the Commission until the filing of the record" and eliminated "upon the pleadings, evidence, and proceedings set forth in such transcript" preceding "a decree affirming".

Subsec. (d). Pub. L. 85-791, § 3(c), substituted "Upon the filing of the record with it the" for "The".

1952—Subsec. (a). Act July 14, 1952, amended subsec. (a) generally to permit fair trade pricing of articles for retail sale.

1950—Subsec. (*l*). Act Mar. 16, 1950, added last sentence to make each separate violation of a cease and desist order as a separate offense, except that each day of a continuing failure to obey a final order shall be a separate offense.

1938—Subsec. (b). Act June 23, 1938, inserted words "air carriers and foreign air carriers subject to chapter 9 of Title 49" in second paragraph.

Act Mar. 21, 1938, amended section generally.

Change of Name

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

Effective Date of 1975 Amendments

Amendment of subsec. (a) by Pub. L. 94-145 effective upon expiration of ninety-day period beginning on Dec. 12, 1975, see section 4 of Pub. L. 94-145, set out as a note under section 1 of this title.

Section 205(b) of Pub. L. 93-637 provided that: "The amendment made by subsection (a) of this section [enacting provisions of subsec. (m) relating to civil penalties] shall not apply to any violation, act, or practice to the extent that such violation, act, or practice occurred before the date of enactment of this Act [Jan. 4, 1975]."

Repeal of subsec. (m) relating to court appearances of Commission by section 204(b) of Pub. L. 93-637 not applicable to any civil action commenced before Jan. 4, 1975, see section 204(c) of Pub. L. 93-637, set out as a note under section 56 of this title.

Effective Date of 1958 Amendment

Amendment by Pub. L. 85-726 effective on the 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualifies and takes office, see section 1505(2) of Pub. L. 85-726, set out as a note under section 1301 of Title 49, Transportation. The Administrator was appointed, qualified, and took office on October 31, 1958.

Effective Date of 1950 Amendment

Amendment by act Mar. 16, 1950, effective July 1, 1950, see note set out under section 347 of Title 21, Food and Drugs.

Repeals

Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806, repealed act June 23, 1938, ch. 601, 52 Stat. 977, cited to the credit of this section.

Transfer of Functions

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

Congressional Findings and Declaration of Purpose Covering Grant of District Subpena Enforcement Authority and Authority To Grant Preliminary Injunctive Relief

Section 408(a) and (b) of Pub. L. 93-153 provided that:

"(a)(1) The Congress hereby finds that the investigative and law enforcement responsibilities of the Federal Trade Commission have been restricted and hampered because of inadequate legal authority to enforce subpenas and to seek preliminary injunctive relief to avoid unfair competitive practices.

"(2) The Congress further finds that as a direct result of this inadequate legal authority significant delays have occurred in a major investigation into the legality of the structure, conduct, and activities of the petroleum industry, as well as in other major investigations designed to protect the public interest.

"(b) It is the purpose of this Act [amending this section and sections 46, 53, and 56 of this title] to grant the Federal Trade Commission the requisite authority to insure prompt enforcement of the laws the Commission administers by granting statutory authority to directly enforce subpenas issued by the Commission and to seek preliminary injunctive relief to avoid unfair competitive practices."

PURPOSE OF ACT JULY 14, 1952

Section 1 of act July 14, 1952, provided: "That it is the purpose of this Act [amending this section] to protect the rights of States under the United States Constitution to regulate their internal affairs and more particularly to enact statutes and laws, and to adopt policies, which authorize contracts and agreements prescribing minimum or stipulated prices for the resale of commodities and to extend the minimum or stipulated prices prescribed by such contracts and agreements to persons who are not parties thereto. It is the further purpose of this Act to permit such statutes, laws, and public policies to apply to commodities, contracts, agreements, and activities in or affecting interstate or foreign commerce."

CROSS REFERENCES

Certiorari and appeal, see section 1254 of Title 28, Judiciary and Judicial Procedure.

Enforcement by Federal Trade Commission of requirements imposed under section 1601 et seq. of this title, see section 1607 of this title.

Enforcement of provisions of sections 13, 14, 18 and 19 of this title, see section 21 of this title.

Proceedings to enforce penalty for violations of order, see section 56 of this title.

Resale price agreements not unfair method of competition under this section, see section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 18a, 52, 53, 56, 57a, 57b, 1456, 1681s, 2006, 2310 of this title; title 7 section 193; title 21 sections 347b, 378; title 39 section 3009; title 42 section 6303.

§ 46. Additional powers of Commission

The Commission shall also have power—

(a) Investigation of persons, partnerships, or corporations

To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other persons, partnerships, and corporations.

(b) Reports of persons, partnerships, and corporations

To require, by general or special orders, persons, partnerships, and corporations, engaged in or whose business affects commerce, excepting banks and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the Commission in such form as the Commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective persons, partnerships, and corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commission may prescribe, and shall be filed with the Commission within such reasonable period as the Commission may prescribe, unless additional time be granted in any case by the Commission.

(c) Investigation of compliance with antitrust decrees

Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the Commission.

(d) Investigations of violations of antitrust statutes

Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

(e) Readjustment of business of corporations violating antitrust statutes

Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) Publication of information; reports

To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(g) Classification of corporations; regulations

From time to time classify corporations and (except as provided in section 57a(a)(2) of this title) to make rules and regulations for the purpose of carrying out the provisions of this subchapter.

(h) Investigations of foreign trade conditions; reports

To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

Provided, That the exception of "banks and common carriers subject to the Act to regulate commerce" from the Commission's powers defined in clauses (a) and (b) of this section, shall not be construed to limit the Commission's authority to gather and compile information, to investigate, or to require reports or answers from, any person, partnership, or corporation to the extent that such action is necessary to the investigation of any person, partnership, or corporation, group of persons, partnerships, or corporations, or industry which is not engaged or is engaged only incidentally in banking or in business as a common carrier subject to the Act to regulate commerce.

(Sept. 26, 1914, ch. 311, § 6, 38 Stat. 721; Nov. 16, 1973, Pub. L. 93-153, title IV, § 408(e), 87 Stat. 592; Jan. 4, 1975, Pub. L. 93-637, title II, §§ 201(b), 202(b), 203(a), 88 Stat. 2193, 2198.)

REFERENCES IN TEXT

The "Act to regulate commerce", referred to in subsecs. (a), (b), and the proviso following subsec. (h), is defined in section 44 of this title.

The "antitrust Acts", referred to in subsecs. (c) to (e), are defined in section 44 of this title.

AMENDMENTS

1975—Subsec. (a). Pub. L. 93-637, §§ 201(b), 203(a)(1), substituted "in or whose business affects commerce" for "in commerce", "person, partnership, or corporation" for "corporation", and "persons, partnerships, and corporations" for "corporations and to individuals, associations, and partnerships".

Subsec. (b). Pub. L. 93-637, §§ 201(b), 203(a)(2), substituted "in or whose business affects commerce" for "in commerce", "special orders, persons, partnerships, and corporations, engaged in or whose business affects commerce, excepting" for "special orders, corporations engaged in or whose business affects commerce, excepting", and "respective persons, partnerships, and corporations" for "respective corporations".

Subsec. (g). Pub. L. 93-637, § 202(b), added "(except as provided in section 57a(a)(2) of this title)" preceding "to make rules and regulations".

Pub. L. 93-637, § 203(a)(3), in the proviso following subsec. (h), substituted "any person, partnership, or corporation to the extent that such action is necessary to the investigation of any person, partnership, or corporation, group of persons, partnerships, or corporations," for "any such corporation to the extent that such action is necessary to the investigation of any corporation, group of corporations,".

1973—Pub. L. 93-153 added proviso following subsec. (h) that the Commission's investigatory powers to gather and compile information, investigate, and require reports or answers is not curtailed as regards banks and common carriers when the investigation in question is an investigation of a corporation, group of corporations, or industry not engaged or engaged only incidentally in banking or in business as a common carrier subject to the Act to regulate commerce notwithstanding provisions excepting banks and common carriers subject to the Act from the exercise of the Commission's power to investigate and require reports from corporations.

APPLICABILITY OF 1975 AMENDMENT TO SUBSECTION (g) OF THIS SECTION

For applicability to rules promulgated or proposed under subsec. (g) of this section prior to Jan. 4, 1975, of amendment made to said subsec. (g) by section 202(b) of Act Jan. 4, 1975, see "Applicability" provisions of section 202(c) of Act Jan. 4, 1975, set out as a note under section 57a of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

EX. ORD. NO. 10544. INSPECTION OF INCOME TAX RETURNS BY FEDERAL TRADE COMMISSION

Ex. Ord. No. 10544, July 12, 1954, 19 F.R. 4289, provided:

By virtue of the authority vested in me by section 55 (a) of the Internal Revenue Code (53 Stat. 29; 54 Stat. 1008; 55 Stat. 722) and in the interest of the internal management of the Government, it is hereby ordered that corporation income tax returns made for the year 1953 and subsequent years shall be open to inspection by the Federal Trade Commission as an aid in executing the powers conferred upon such Commission by the Federal Trade Commission Act of September 26, 1914, 38 Stat. 717, [this subchapter], such inspection to be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in the Treasury decision relating to the inspection of returns by the Federal Trade Commission, approved by me this date [T.D. 6080, 19 F.R. 4308].

This Executive Order shall be effective upon its filing for publication in the Federal Register.

CROSS REFERENCES

Enforcement by Federal Trade Commission of requirements imposed under section 1601 et seq. of this title, see section 1607 of this title.

Jurisdiction, powers and duties of Secretary of Agriculture in enforcing the provisions of the Packers and Stockyards Act, application of this section to, see section 222 of Title 7, Agriculture.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 756 of this title; title 7 sections 222, 2146; title 21 sections 467d, 677, 1051.

§ 46a. Concurrent resolution essential to authorize investigations

After June 16, 1933, no new investigations shall be initiated by the Commission as the result of a legislative resolution, except the same be a concurrent resolution of the two Houses of Congress.

(June 16, 1933, ch. 101, § 1, 48 Stat. 291.)

CODIFICATION

Section was not enacted as part of the Federal Trade Commission Act which comprises this subchapter.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§ 47. Reference of suits under antitrust statutes to Commission

In any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the Commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The Commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

(Sept. 26, 1914, ch. 311, § 7, 38 Stat, 722.)

References in Text

"In any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts" has reference to actions under sections 4, 9, and 25 of this title.

The "antitrust Acts", referred to in text, are defined in section 44 of this title.

Transfer of Functions

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§ 48. Information and assistance from departments

The several departments and bureaus of the Government when directed by the President shall furnish the Commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this subchapter, and shall detail from time to time such officials and employees to the Commission as he may direct.

(Sept. 26, 1914, ch. 311, § 8, 38 Stat. 722.)

Transfer of Functions

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

Cross References

Jurisdiction, powers and duties of Secretary of Agriculture in enforcing the provisions of the Packers and Stockyards Act, application of this section to, see section 222 of Title 7, Agriculture.

Section Referred to in Other Sections

This section is referred to in title 7 sections 222, 610, 2146; title 21 sections 467d, 677, 1051.

§ 49. Documentary evidence; depositions; witnesses

For the purposes of this subchapter the Commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against; and the Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the Commission may sign subpoenas, and members and examiners of the Commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, partnership, or corporation issue an order requiring such person, partnership, or corporation to appear before the Commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the Commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person, partnership, or corporation to comply with the provisions of this subchapter or any order of the Commission made in pursuance thereof.

The Commission may order testimony to be taken by deposition in any proceeding or investigation pending under this subchapter at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(Sept. 26, 1914, ch. 311, § 9, 38 Stat. 722; Oct. 15, 1970, Pub. L. 91-452, title II, § 211, 84 Stat. 929; Jan. 4, 1975, Pub. L. 93-637, title II, § 203(b), 88 Stat. 2198.)

Amendments

1975—First par. Pub. L. 93-637, § 203(b)(1), substituted "person, partnership, or corporation" for "corporation".

Third par. Pub. L. 93-637, § 203(b)(2), substituted "person, partnership, or corporation" for "corporation or other person" wherever appearing therein.

Fourth par. Pub. L. 93-637, § 203(b)(3), substituted "person, partnership, or corporation" for "person or corporation".

1970—Pub. L. 91-452 struck out the provisions which granted immunity from prosecution for any natural person testifying or producing evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it.

Effective Date of 1970 Amendment

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub.

L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

Transfer of Functions

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

Savings Provision

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

Cross References

Administrator of Wages and Hour Division, Secretary of Labor, and the industry committees under Fair Labor Standards Act, application of this section to, see section 209 of Title 29, Labor.

Contempts—
- Contempts constituting crimes, see section 402 of Title 18, Crimes and Criminal Procedure.
- Jury trial of criminal contempts, see section 3691 of Title 18.
- Limitation of prosecution, see section 3285 of Title 18.
- Power of court, see section 401 of Title 18.
- Power of Supreme Court to prescribe procedure to and including and after verdict, see sections 3771 and 3772 of Title 18.
- Witness in foreign country failing to appear pursuant to subpoena, see section 1784 of Title 28, Judiciary and Judicial Procedure.

Hearings and investigations under Fair Labor Standards Act, application to, see section 209 of Title 29, Labor.

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Jurisdiction, powers and duties of Secretary of Agriculture in enforcing the provisions of the Packers and Stockyards Act, application of this section to, see section 222 of Title 7, Agriculture.

Per diem and mileage of witnesses, see section 1821 of Title 28, Judiciary and Judicial Procedure.

Writs, issuance of, see section 1651 of Title 28.

Federal Rules of Civil Procedure

Application of rules to this section, see notes by Advisory Committee under rules 45 and 81, Title 28, Appendix, Judiciary and Judicial Procedure.

Mandamus as abolished and manner of obtaining relief heretofore available, see rule 81.

Subpoena, see rule 45.

Federal Rules of Criminal Procedure

Application of rule 42 to this section, see note by Advisory Committee under rule 42, Title 18, Appendix, Crimes and Criminal Procedure.

Criminal contempt, see rule 42.

Subpoena, see rule 17.

Section Referred to in Other Sections

This section is referred to in section 756 of this title; title 7 sections 222, 610, 2046, 2146; title 21 sections 467d, 677, 1051; title 26 section 5274; title 27 section 202; title 29 sections 177, 209, 308, 521, 1134; title 33 section 944; title 50 App. section 1983.

§ 50. Offenses and penalties

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this subchapter, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person, partnership, or corporation subject to this subchapter, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such person, partnership, or corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such person, partnership, or corporation, or who shall willfully refuse to submit to the Commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such person, partnership, or corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any persons, partnership, or corporation required by this subchapter tò file any annual or special report shall fail so to do within the time fixed by the Commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the case of a corporation or partnership in the district where the corporation or partnership has its principal office or in any district in which it shall do business, and in the case of any person in the district where such person resides or has his principal place of business. It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the Commission who shall make public any information obtained by the Commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

(Sept. 26, 1914, ch. 311, § 10, 38 Stat. 723; June 25, 1948, ch. 646, § 1, 62 Stat. 909; Jan. 4, 1975, Pub. L. 93-637, title II, § 203(c), 88 Stat. 2199.)

AMENDMENTS

1975—Second par. Pub. L. 93-637, § 203(c)(1), substituted "person, partnership, or corporation" for "corporation" wherever appearing therein.

Third par. Pub. L. 93-637, § 203(c)(2), substituted "If any persons, partnership, or corporation" for "If any corporation", and "in the case of a corporation or partnership in the district where the corporation or partnership has its principal office or in any district in which it shall do business, and in the case of any person in the district where such person resides or has his principal place of business" for "in the district where the corporation has its principal office or in any district in which it shall do business".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys". See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

CROSS REFERENCES

Administrator of Wages and Hour Division, Secretary of Labor, and the industry committees under Fair Labor Standards Act, application of this section to, see section 209 of Title 29, Labor.

Dissemination of false advertisements—

Penalty for, see section 54 of this title.

Unlawfulness of, see section 52 of this title.

Fraud and false statements, see chapter 47 of Title 18, Crimes and Criminal Procedure.

Hearings and investigations under Fair Labor Standards Act, application, see section 209 of Title 29, Labor.

Jurisdiction, powers and duties of Secretary of Agriculture in enforcing the provisions of the Packers and Stockyards Act, application of this section to, see section 222 of Title 7, Agriculture.

Misdemeanor, offense, punishable by imprisonment for a term not exceeding one year as, see section 1 of Title 18, Crimes and Criminal Procedure.

FEDERAL RULES OF CRIMINAL PROCEDURE

Subpoena, see rule 17, Title 18, Appendix, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 756 of this title; title 7 sections 222, 610, 2046, 2146; title 21 sections 467d, 677, 1051; title 26 section 5274; title 27 section 202; title 29 sections 177, 209, 308, 521, 1134; title 33 section 944; title 50 App. section 1983.

§ 51. Effect on other statutory provisions

Nothing contained in this subchapter shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts or the Acts to regulate commerce, nor shall anything contained in this subchapter be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

(Sept. 26, 1914, ch. 311, § 11, 38 Stat. 724.)

REFERENCES IN TEXT

The "antitrust Acts", referred to in text, are defined in section 44 of this title.

The "Acts to regulate commerce", referred to in text, are defined in section 44 of this title.

§ 52. Dissemination of false advertisements

(a) Unlawfulness

It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement—

(1) By United States mails, or in or having an effect upon commerce, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of food, drugs, devices, or cosmetics; or

(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or having an effect upon commerce, of food, drugs, devices, or cosmetics.

(b) Unfair or deceptive act or practice

The dissemination or the causing to be disseminated of any false advertisement within the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice in or affecting commerce within the meaning of section 45 of this title.

(Sept. 26, 1914, ch. 311, § 12, as added Mar. 21, 1938, ch. 49, § 4, 52 Stat. 114, and amended Jan. 4, 1975, Pub. L. 93-637, title II, § 201(c), 88 Stat. 2193.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 93-637 substituted "in or having an effect upon commerce," for "in commerce".

Subsec. (b). Pub. L. 93-637 substituted "in or affecting Commerce" for "in commerce".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 54, 55 of this title; title 21 section 352.

§ 53. False advertisements; injunctions and restraining orders

(a) Power of Commission; jurisdiction of courts

Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is engaged in, or is about to engage in, the dissemination or the causing of the dissemination of any advertisement in violation of section 52 of this title, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 45 of this title, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 45 of this title, would be to the interest of the public,

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States or in the United States court of any Territory, to enjoin the dissemination or the causing of the dissemination of such advertisement. Upon proper showing a temporary injunction or restraining order shall be granted without bond. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business.

(b) Temporary restraining orders; preliminary injunctions

Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public—

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminay injunction may be granted without bond: *Provided, however,* That if a complaint is not filed within such period (not exceeding 20 days) as may be specified by the court after issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect: *Provided further,* That in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business.

(c) Exception of periodical publications

Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals—

(1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and

(2) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement,

the court shall exclude such issue from the operation of the restraining order or injunction.

(Sept. 26, 1914, ch. 311, § 13, as added Mar. 21, 1938, ch. 49, § 4, 52 Stat. 114, and amended Nov. 16, 1973, Pub. L. 93-153, title IV, § 408(f), 87 Stat. 592.)

AMENDMENTS

1973—Subsec. (b). Pub. L. 93-153 added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 93-153 redesignated former subsec. (b) as (c).

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 55, 56 of this title; title 21 sections 352, 378.

§ 54. False advertisements; penalties

(a) Imposition of penalties

Any person, partnership, or corporation who violates any provision of section 52(a) of this title shall, if the use of the commodity advertised may be injurious to health because of results from such use under the conditions prescribed in the advertisement thereof, or under such conditions as are customary or usual, or if such violation is with intent to defraud or mislead, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than $5,000 or by imprisonment for not more than six months, or by both such fine and imprisonment; except that if the conviction is for a violation committed after a first conviction of such person, partnership, or corporation, for any violation of such section, punishment shall be by a fine of not more than $10,000 or by imprisonment for not more than one year, or by both such fine and imprisonment: *Provided,* That for the purposes of this section meats and meat food products duly inspected, marked, and labeled in accordance with rules and regulations issued under the Meat Inspection Act [21 U.S.C. 601 et seq.] shall be conclusively presumed not injurious to health at the time the same leave official "establishments."

(b) Exception of advertising medium or agency

No publisher, radio-broadcast licensee, or agency or medium for the dissemination of advertising, except the manufacturer, packer, distributor, or seller of the commodity to which the false advertisement relates, shall be liable under this section by reason of the dissemination by him of any false advertisement, unless he has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States, who caused him to disseminate such advertisement. No advertising agency shall be liable under this section by reason of the causing by it of the dissemination of any false advertisement, unless it has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, or seller, residing in the United States, who caused it to cause the dissemination of such advertisement.

(Sept. 26, 1914, ch. 311, § 14, as added Mar. 21, 1938, ch. 49, § 4, 52 Stat. 114.)

REFERENCES IN TEXT

The Meat Inspection Act, referred to in subsec. (a), is act Mar. 4, 1907, ch. 2907, titles I to IV, as added Dec. 15, 1967, Pub. L. 90-201, 81 Stat. 584, which is classified to subchapters I to IV (§ 601 et seq.) of chapter 12 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 21 and Tables volume.

EFFECTIVE DATE

Section 5(b) of act Mar. 21, 1938, provided: "Section 14 of the Federal Trade Commission Act [this section] added to such Act by section 4 of this Act, shall take effect on the expiration of sixty days after the date of the enactment of this Act [Mar. 21, 1938]."

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

CROSS REFERENCES

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

Offenses and penalties generally, see section 50 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 55 of this title; title 21 section 352.

§ 55. Additional definitions

For the purposes of sections 52 to 54 of this title—

(a) False advertisement

(1) The term "false advertisement" means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. No advertisement of a drug shall be deemed to be false if it is disseminated only to members of the medical profession, contains no false representation of a material fact, and includes, or is accompanied in each instance by truthful disclosure of, the formula showing quantitatively each ingredient of such drug.

(2) In the case of oleomargarine or margarine an advertisement shall be deemed misleading in a material respect if in such advertisement representations are made or suggested by statement, word, grade designation, design, device, symbol, sound, or any combination thereof, that such oleomargarine or margarine is a dairy product, except that nothing contained herein shall prevent a truthful, accurate, and full statement in any such advertisement of all the ingredients contained in such oleomargarine or margarine.

(b) Food

The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(c) Drug

The term "drug" means (1) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.

(d) Device

The term "device" (except when used in subsection (a) of this section) means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is—

(1) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them,

(2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or

(3) intended to affect the structure or any function of the body of man or other animals, and

which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(e) Cosmetic

The term "cosmetic" means (1) articles to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof intended for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such article; except that such term shall not include soap.

(f) Oleomargarine or margarine

For the purposes of this section and section 347 of title 21, the term "oleomargarine" or "margarine" includes—

(1) all substances, mixtures, and compounds known as oleomargarine or margarine;

(2) all substances, mixtures, and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter.

(Sept. 26, 1914, ch. 311, § 15, as added Mar. 21, 1938, ch. 49, § 4, 52 Stat. 114, and amended Mar. 16, 1950, ch. 61, § 4(a), (b), 64 Stat. 21; May 28, 1976, Pub. L. 94-295, § 3(a)(1)(B), 90 Stat. 575.)

AMENDMENTS

1976—Subsec. (d). Pub. L. 94-295 expanded the definition of "device" to include implements, machines, implants, in vitro reagents, and other similar or related articles, added recognition in the National Formulary or the United States Pharmacopeia, or any supplement to the Formulary or Pharmacopeia, to the enumeration of conditions under which a device may qualify for inclusion under this chapter, and added requirements that a device be one which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

1950—Subsec. (a). Act Mar. 16, 1950, § 4(a), made former subsec. (a) par. (1) of said subsection, and added new par. (2) relating to oleomargarine.

Subsec. (f). Act Mar. 16, 1950, § 4(b), added subsec. (f).

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment by act Mar. 16, 1950, effective July 1, 1950, see note set out under section 347 of Title 21, Food and Drugs.

CROSS REFERENCES

Other definitions, see sections 44 and 45 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 21 sections 347b, 352.

§ 56. Commencement, defense, intervention and supervision of litigation and appeal by Commission or Attorney General; procedure for exercise of authority to litigate or appeal; certification by Commission to Attorney General for criminal proceedings

(a)(1) Except as otherwise provided in paragraph (2) or (3), if—

(A) before commencing, defending, or intervening in, any civil action involving this subchapter (including an action to collect a civil penalty) which the Commission, or the Attorney General on behalf of the Commission, is authorized to commence, defend, or intervene in, the Commission gives written notification and undertakes to consult with the Attorney General with respect to such action; and

(B) the Attorney General fails within 45 days after receipt of such notification to commence, defend, or intervene in, such action;

the Commission may commence, defend, or intervene in, and supervise the litigation or, such action and any appeal of such action in its own name by any of its attorneys designated by it for such purpose.

(2) Except as otherwise provided in paragraph (3), in any civil action—

(A) under section 53 of this title (relating to injunctive relief);

(B) under section 57b of this title (relating to consumer redress);

(C) to obtain judicial review of a rule prescribed by the Commission, or a cease and desist order issued under section 45 of this title; or

(D) under the second paragraph of section 49 of this title (relating to enforcement of a subpena) and under the fourth paragraph of such section (relating to compliance with section 46 of this title);

the Commission shall have exclusive authority to commence or defend, and supervise the litigation of, such action and any appeal of such action in its own name by any of its attorneys designated by it for such purpose, unless the Commission authorizes the Attorney General to do so. The Commission shall inform the Attorney General of the exercise of such authority and such exercise shall not preclude the Attorney General from intervening on behalf of the United States in such action and any appeal of such action as may be otherwise provided by law.

(3)(A) If the Commission makes a written request to the Attorney General, within the 10-day period which begins on the date of the entry of the judgment in any civil action in which the Commission represented itself pursuant to paragraph (1) or (2), to represent itself through any of its attorneys designated by it for such purpose before the Supreme Court in such action, it may do so, if—

(i) the Attorney General concurs with such request; or

(ii) the Attorney General, within the 60-day period which begins on the date of the entry of such judgment—

(a) refuses to appeal or file a petition for writ of certiorari with respect to such civil action, in which case he shall give written notification to the Commission of the reasons for such refusal within such 60-day period; or

(b) the Attorney General fails to take any action with respect to the Commission's request.

(B) In any case where the Attorney General represents the Commission before the Supreme Court in any civil action in which the Commission represented itself pursuant to paragraph (1) or (2), the Attorney General may not agree to any settlement, compromise, or dismissal of such action, or confess error in the Supreme Court with respect to such action, unless the Commission concurs.

(C) For purposes of this paragraph (with respect to representation before the Supreme Court), the term "Attorney General" includes the Solicitor General.

(4) If, prior to the expiration of the 45-day period specified in paragraph (1) of this section or a 60-day period specified in paragraph (3), any right of the Commission to commence, defend, or intervene in, any such action or appeal may be extinguished due to any procedural requirement of any court with respect to the time in which any pleadings, notice of appeal, or other acts pertaining to such action or appeal may be taken, the Attorney General shall have one-half of the time required to comply with any such procedural requirement of the court (including any extension of such time granted by the court) for the purpose of commencing, defending, or intervening in the civil action pursuant to paragraph (1) or for the purpose of refusing to appeal or file a petition for writ of certiorari and the written notification or failing to take any action pursuant to paragraph 3(A)(ii).

(5) The provisions of this subsection shall apply notwithstanding chapter 31 of title 28, or any other provision of law.

(b) Whenever the Commission has reason to believe that any person, partnership, or corporation is liable for a criminal penalty under this subchapter, the Commission shall certify the facts to the Attorney General, whose duty it shall be to cause appropriate criminal proceedings to be brought.

(Sept. 26, 1914, ch. 311, § 16, as added Mar. 21, 1938, ch. 49, § 4, 52 Stat. 114, and amended Nov. 16, 1973, Pub. L. 93-153, title IV, § 408(g), 87 Stat. 592; Jan. 4, 1975, Pub. L. 93-637, title II, § 204(a), 88 Stat. 2199.)

AMENDMENTS

1975—Pub. L. 93-637 substituted provisions authorizing the Commission at its election to appear in court by its own name and designate its attorneys for such purpose, for provisions relating to the certification of facts by the Commission to the Attorney General who brought the appropriate proceedings, or, after compliance with section 45(m) of this title, itself brought the appropriate proceedings.

1973—Pub. L. 93-153 added provisions authorizing the Federal Trade Commission to itself cause appropriate proceedings to be brought after compliance with the requirements of section 45(m) of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 204(c) of Pub. L. 93-637 provided that: "The amendment and repeal made by this section [amending this section and repealing section 45(m) of this title] shall not apply to any civil action commenced before the date of enactment of this Act [Jan. 4, 1975]."

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 21 sections 352, 378.

§ 57. Separability clause

If any provision of this subchapter, or the application thereof to any person, partnership, or corporation, or circumstance, is held invalid, the remainder of this subchapter, and the application of such provisions to any other person, partnership, corporation, or circumstance, shall not be affected thereby.

(Sept. 26, 1914, ch. 311, § 17, as added Mar. 21, 1938, ch. 49, § 4, 52 Stat. 114.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 21 section 352.

§ 57a. Unfair or deceptive acts or practices rulemaking proceedings

(a) Authority of Commission to prescribe rules and general statements of policy

(1) The Commission may prescribe—

(A) interpretive rules and general statements of policy with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title), and

(B) rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title). Rules under this subparagraph may include requirements prescribed for the purpose of preventing such acts or practices.

(2) The Commission shall have no authority under this subchapter, other than its authority under this section, to prescribe any rule with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title). The preceding sentence shall not affect any authority of the Commission to prescribe rules (including interpretive rules), and general statements of policy, with respect to unfair methods of competition in or affecting commerce.

(b) Procedures applicable

When prescribing a rule under subsection (a)(1)(B) of this section, the Commission shall proceed in accordance with section 553 of title 5 (without regard to any reference in such section to sections 556 and 557 of such title), and shall also (1) publish a notice of proposed rulemaking stating with particularity the reason for the proposed rule; (2) allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available; (3) provide an opportunity for an informal hearing in accordance with subsection (c) of this section; and (4) promulgate, if appropriate, a final rule based on the matter in the rulemaking record (as defined in subsection (e)(1)(B) of this section), together with a statement of basis and purpose.

(c) Informal hearing procedure

The Commission shall conduct any informal hearings required by subsection (b)(3) of this section in accordance with the following procedure:

(1) Subject to paragraph (2) of this subsection, an interested person is entitled—

(A) to present his position orally or by documentary submission (or both), and

(B) if the Commission determines that there are disputed issues of material fact it is necessary to resolve, to present such rebuttal submissions and to conduct (or have conducted under paragraph (2)(B)) such cross-examination of persons as the Commission determines (i) to be appropriate, and (ii) to be required for a full and true disclosure with respect to such issues.

(2) The Commission may prescribe such rules and make such rulings concerning proceedings in such hearings as may tend to avoid unnecessary costs or delay. Such rules or rulings may include (A) imposition of reasonable time limits on each interested person's oral presentations, and (B) requirements that any cross-examination to which a person may be entitled under paragraph (1) be conducted by the Commission on behalf of that person in such manner as the Commission determines (i) to be appropriate, and (ii) to be required for a full and true disclosure with respect to disputed issues of material fact.

(3)(A) Except as provided in subparagraph (B), if a group of persons each of whom under paragraphs (1) and (2) would be entitled to conduct (or have conducted) cross-examination and who are determined by the Commission to have the same or similar interests in the proceeding cannot agree upon a single representative of such interests for purposes of cross-examination, the Commission may make rules and rulings (i) limiting the representation of such interest, for such purposes, and (ii) governing the manner in which such cross-examination shall be limited.

(B) When any person who is a member of a group with respect to which the Commission has made a determination under subparagraph (A) is unable to agree upon group representation with the other members of the group, then such person shall not be denied under the authority of subparagraph (A) the opportunity to conduct (or have conducted) cross-examination as to issues affecting his particular interests if (i) he satisfies the Commission that he has made a reasonable and good faith effort to reach agreement upon group representation with the other members of the group and (ii) the Commission determines that there are substantial and relevant issues which are not adequately presented by the group representative.

(4) A verbatim transcript shall be taken of any oral presentation, and cross-examination, in an informal hearing to which this subsection applies. Such transcript shall be available to the public.

(d) Statement of basis and purpose accompanying rule; "Commission" defined; judicial review of amendment or repeal of rule; violation of rules

(1) The Commission's statement of basis and purpose to accompany a rule promulgated under subsection (a)(1)(B) of this section shall include (A) a statement as to the prevalence of the acts or practices treated by the rule; (B) a statement as to the manner and context in which such acts or practices are unfair or deceptive; and (C) a statement as to the economic effect of the rule, taking into account the effect on small business and consumers.

(2)(A) The term "Commission" as used in this subsection and subsections (b) and (c) of this section includes any person authorized to act in behalf of the Commission in any part of the rulemaking proceeding.

(B) A substantive amendment to, or repeal of, a rule promulgated under subsection (a)(1)(B) of this section shall be prescribed, and subject to judicial review, in the same manner as a rule prescribed under such subsection. An exemption under subsection (g) of this section shall not be treated as an amendment or repeal of a rule.

(3) When any rule under subsection (a)(1)(B) of this section takes effect a subsequent violation thereof shall constitute an unfair or deceptive act or practice in violation of section 45(a)(1) of this title, unless the Commission otherwise expressly provides in such rule.

(e) Judicial review; petition; jurisdiction and venue; rulemaking record; additional submissions and presentations; scope of review and relief; review by Supreme Court; additional remedies

(1)(A) Not later than 60 days after a rule is promulgated under subsection (a)(1)(B) of this section by the Commission, any interested person (including a consumer or consumer organization) may file a petition, in the United States Court of Appeals for the District of Columbia circuit or for the circuit in which such person resides or has his principal place of business, for judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose. The provisions of section 2112 of title 28 shall apply to the filing of the rulemaking record of proceedings on which the Commission based its rule and to the transfer of proceedings in the courts of appeals.

(B) For purposes of this section, the term "rulemaking record" means the rule, its statement of basis and purpose, the transcript required by subsection (c)(4) of this section, any written submissions, and any other information which the Commission considers relevant to such rule.

(2) If the petitioner or the Commission applies to the court for leave to make additional oral submissions or written presentations and shows to the satisfaction of the court that such submissions and presentations would be material and that there were reasonable grounds for the submissions and failure to make such submissions and presentations in the proceeding before the Commission, the court may order the Commission to provide additional opportunity to make such submissions and presentations. The Commission may modify or set aside its rule or make a new rule by reason of the additional submissions and presentations and shall file such modified or new rule, and the rule's statement of basis of purpose, with the return of such submissions and presentations. The court shall thereafter review such new or modified rule.

(3) Upon the filing of the petition under paragraph (1) of this subsection, the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief, including interim relief, as provided in such chapter. The court shall hold unlawful and set aside the rule on any ground specified in subparagraphs (A), (B), (C), or (D) of section 706(2) of title 5 (taking due account of the rule of prejudicial error), or if—

(A) the court finds that the Commission's action is not supported by substantial evidence in the rulemaking record (as defined in paragraph (1)(B) of this subsection) taken as a whole, or

(B) the court finds that—

(i) a Commission determination under subsection (c) of this section that the petitioner is not entitled to conduct cross-examination or make rebuttal submissions, or

(ii) a Commission rule or ruling under subsection (c) of this section limiting the petitioner's cross-examination or rebuttal submissions,

has precluded disclosure of disputed material facts which was necessary for fair determination by the Commission of the rulemaking proceeding taken as a whole.

The term "evidence", as used in this paragraph, means any matter in the rulemaking record.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(5)(A) Remedies under the preceding paragraphs of this subsection are in addition to and not in lieu of any other remedies provided by law.

(B) The United States Courts of Appeal shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of a rule prescribed under subsection (a)(1)(B) of this section, if any district court of the United States would have had jurisdiction of such action but for this subparagraph. Any such action shall be brought in the United States Court of Appeals for the District of Columbia circuit, or for any circuit which includes a judicial district in which the action could have been brought but for this subparagraph.

(C) A determination, rule, or ruling of the Commission described in paragraph (3)(B)(i) or (ii) may be reviewed only in a proceeding under this subsection and only in accordance with paragraph (3)(B). Section 706(2)(E) of title 5 shall not apply to any rule promulgated under subsection (a)(1)(B) of this section. The contents and adequacy of any statement required by subsection (b)(4) of this section shall not be subject to judicial review in any respect.

(f) Bank unfair or deceptive acts or practices; promulgation of regulations by Board of Governors of Federal Reserve System; agency enforcement and compliance proceedings; effect of violations; power of other Federal agencies unaffected; reporting requirements

(1) In order to prevent unfair or deceptive acts or practices in or affecting commerce (including acts or practices which are unfair or deceptive to consumers) by banks, each agency specified in paragraph (2) of this subsection shall establish a separate division of consumer affairs which shall receive and take appropriate action upon complaints with respect to such acts or practices by banks subject to its jurisdiction. The Board of Governors of the Federal Reserve System shall prescribe regulations to carry out the purposes of this section, including regulations defining with specificity such unfair or deceptive acts or practices, and containing requirements prescribed for the purpose of preventing such acts or practices. Whenever the Commission prescribes a rule under subsection (a)(1)(B) of this section, then within 60 days after such rule takes effect such Board shall promulgate substantially similar regulations prohibiting acts or practices of banks which are substantially similar to those prohibited by rules of the Commission and which impose substantially similar requirements, unless such Board finds that (A) such acts or practices of banks are not unfair or deceptive, or (B) that implementation of similar regulations with respect to banks would seriously conflict with essential monetary and payments systems policies of the Board, and publishes any such finding, and the reasons therefor, in the Federal Register.

(2) Compliance with regulations prescribed under this subsection shall be enforced under section 1818 of title 12, in the case of—

(A) national banks and banks operating under the code of law for the District of Columbia, by the division of consumer affairs established by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than banks referred to in subparagraph (A)) by the division of consumer affairs established by the Board of Governors of the Federal Reserve System; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in subparagraph (A) or (B)), by the division of consumer affairs established by the Board of Directors of the Federal Deposit Insurance Corporation.

(3) For the purpose of the exercise by any agency referred to in paragraph (2) of its powers under any Act referred to in that paragraph, a violation of any regulation prescribed under this subsection shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (2), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with any regulation prescribed under this subsection, any other authority conferred on it by law.

(4) The authority of the Board of Governors of the Federal Reserve System to issue regulations under this subsection does not impair the authority of any other agency designated in this subsection to make rules respecting its own procedures in enforcing compliance with regulations prescribed under this subsection.

(5) Each agency exercising authority under this subsection shall transmit to the Congress not later than March 15 of each year a detailed report on its activities under this paragraph during the preceding calendar year.

(g) Exemptions and stays from application of rules; procedures

(1) Any person to whom a rule under subsection (a)(1)(B) of this section applies may petition the Commission for an exemption from such rule.

(2) If, on its own motion or on the basis of a petition under paragraph (1), the Commission finds that the application of a rule prescribed under subsection (a)(1)(B) of this section to any person or class or [1] persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates, the Commission may exempt such person or class from all or part of such rule. Section 553 of title 5 shall apply to action under this paragraph.

(3) Neither the pendency of a proceeding under this subsection respecting an exemption from a rule, nor the pendency of judicial proceedings to review the Commission's action or failure to act under this subsection, shall stay the applicability of such rule under subsection (a)(1)(B) of this section.

(h) Compensation for attorney fees, expert witness fees, etc., incurred by persons in rulemaking proceedings; aggregate amount payable in any fiscal year

(1) The Commission may, pursuant to rules prescribed by it, provide compensation for reasonable attorneys fees, expert witness fees, and other costs of participating in a rulemaking proceeding under this section to any person (A) who has, or represents, an interest (i) which would not otherwise be adequately represented in such proceeding, and (ii) representation of which is necessary for a fair determination of the rulemaking proceeding taken as a whole, and (B) who is unable effectively to participate in such proceeding because such person cannot

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[1] So in original, probably should be "of".

afford to pay costs of making oral presentations, conducting cross-examination, and making rebuttal submissions in such proceeding.

(2) The aggregate amount of compensation paid under this subsection in any fiscal year to all persons who, in rulemaking proceedings in which they receive compensation, are persons who either (A) would be regulated by the proposed rule, or (B) represent persons who would be so regulated, may not exceed 25 percent of the aggregate amount paid as compensation under this subsection to all persons in such fiscal year.

(3) The aggregate amount of compensation paid to all persons in any fiscal year under this subsection may not exceed $1,000,000.

(Sept. 26, 1914, ch. 311, § 18, as added Jan. 4, 1975, Pub. L. 93-637, title II, § 202(a), 88 Stat. 2193.)

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in subsec. (f)(2)(A), not included in the transfer of functions to the Secretary of the Treasury, see note set out under section 1 of Title 12, Banks and Banking.

APPLICABILITY OF UNFAIR OR DECEPTIVE ACTS OR PRACTICES RULEMAKING PROCEDURES TO RULES CLASSIFYING CORPORATIONS PROMULGATED PRIOR TO JANUARY 4, 1975

Section 202(c) of Pub. L. 93-637 provided that:

"(1) The amendments made by subsections (a) and (b) of this section [adding section 57a of this title and amending section 46(g) of this title] shall not affect the validity of any rule which was promulgated under section 6(g) of the Federal Trade Commission Act [section 46(g) of this title] prior to the date of enactment of this section [Jan. 4, 1975]. Any proposed rule under section 6(g) of such Act with respect to which presentation of data, views, and arguments was substantially completed before such date may be promulgated in the same manner and with the same validity as such rule could have been promulgated had this section not been enacted.

"(2) If a rule described in paragraph (1) of this subsection is valid and if section 18 of the Federal Trade Commission Act [section 57a of this title] would have applied to such rule had such rule been promulgated after the date of enactment of this Act, any substantive change in the rule after it has been promulgated shall be made in accordance with such section 18."

STUDY, EVALUATION, AND REPORT BY FEDERAL TRADE COMMISSION AND ADMINISTRATIVE CONFERENCE OF UNITED STATES ON UNFAIR OR DECEPTIVE ACTS OR PRACTICES; RULEMAKING PROCEDURES.

Section 202(d) of Pub. L. 93-637, as amended by Pub. L. 94-299, § 2, May 29, 1976, 90 Stat. 588, provided that: "The Federal Trade Commission and the Administrative Conference of the United States shall each conduct a study and evaluation of the rulemaking procedures under section 18 of the Federal Trade Commission Act [this section] and each shall submit a report of its study (including any legislative recommendations) to the Congress not later than July 5, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 2006, 2309 of this title; title 42 section 6306.

§ 57b. Civil actions for violations of rules and cease and desist orders respecting unfair or deceptive acts or practices

(a) Suits by Commission against persons, partnerships, or corporations; jurisdiction; relief for dishonest or fraudulent acts

(1) If any person, partnership, or corporation violates any rule under this subchapter respecting unfair or deceptive acts or practices (other than an interpretive rule, or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of section 45(a) of this title), then the Commission may commence a civil action against such person, partnership, or corporation for relief under subsection (b) of this section in a United States district court or in any court of competent jurisdiction of a State.

(2) If any person, partnership, or corporation engages in any unfair or deceptive act or practice (within the meaning of section 45(a)(1) of this title) with respect to which the Commission has issued a final cease and desist order which is applicable to such person, partnership, or corporation, then the Commission may commence a civil action against such person, partnership, or corporation in a United States district court or in any court of competent jurisdiction of a State. If the Commission satisfies the court that the act or practice to which the cease and desist order relates is one which a reasonable man would have known under the circumstances was dishonest or fraudulent, the court may grant relief under subsection (b) of this section.

(b) Nature of relief available

The court in an action under subsection (a) of this section shall have jurisdiction to grant such relief as the court finds necessary to redress injury to consumers or other persons, partnerships, and corporations resulting from the rule violation or the unfair or deceptive act or practice, as the case may be. Such relief may include, but shall not be limited to, rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting the rule violation or the unfair or deceptive act or practice, as the case may be; except that nothing in this subsection is intended to authorize the imposition of any exemplary or punitive damages.

(c) Conclusiveness of findings of Commission in cease and desist proceedings; notice of judicial proceedings to injured persons, etc.

(1) If (A) a cease and desist order issued under section 45(b) of this title has become final under section 45(g) of this title with respect to any person's, partnership's, or corporation's rule violation or unfair or deceptive act or practice, and (B) an action under this section is brought with respect to such person's, partnership's, or corporation's rule violation or act or practice, then the findings of the Commission as to the material facts in the proceeding under section 45(b) of this title with respect to such person's, partnership's, or corporation's rule violation or act or practice, shall be conclusive unless (i) the terms of such cease and desist order expressly provide that the Commission's findings shall not be conclusive, or (ii) the order became final by reason of

section 45(g)(1) of this title, in which case such finding shall be conclusive if supported by evidence.

(2) The court shall cause notice of an action under this section to be given in a manner which is reasonably calculated, under all of the circumstances, to apprise the persons, partnerships, and corporations allegedly injured by the defendant's rule violation or act or practice of the pendency of such action. Such notice may, in the discretion of the court, be given by publication.

(d) Time for bringing of actions

No action may be brought by the Commission under this section more than 3 years after the rule violation to which an action under subsection (a)(1) of this section relates, or the unfair or deceptive act or practice to which an action under subsection (a)(2) of this section relates; except that if a cease and desist order with respect to any person's, partnership's, or corporation's rule violation or unfair or deceptive act or practice has become final and such order was issued in a proceeding under section 45(b) of this title which was commenced not later than 3 years after the rule violation or act or practice occurred, a civil action may be commenced under this section against such person, partnership, or corporation at any time before the expiration of one year after such order becomes final.

(e) Availability of additional Federal or State remedies; other authority of Commission unaffected

Remedies provided in this section are in addition to, and not in lieu of, any other remedy or right of action provided by State or Federal law. Nothing in this section shall be construed to affect any authority of the Commission under any other provision of law.

(Sept. 26, 1914, ch. 311, § 19, as added Jan. 4, 1975, Pub. L. 93-637, title II, § 206(a), 88 Stat. 2201.)

EFFECTIVE DATE

Section 206(b) of Pub. L. 93-637 provided that:

"The amendment made by subsection (a) of this section [enacting this section] shall not apply to—

"(1) any violation of a rule to the extent that such violation occurred before the date of enactment of this Act [Jan. 4, 1975], or

"(2) any act or practice with respect to which the Commission issues a cease-and-desist order, to the extent that such act or practice occurred before the date of enactment of this Act [Jan. 4, 1975], unless such order was issued after such date and the person, partnership or corporation against whom such an order was issued had been notified in the complaint, or in the notice or order attached thereto, that consumer redress may be sought."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 56 of this title; title 21 section 378.

§ 57c. Authorization of appropriations

There are authorized to be appropriated to carry out the functions, powers, and duties of the Federal Trade Commission not to exceed $42,000,000 for the fiscal year ending June 30, 1975; not to exceed $47,091,000 for the fiscal year ending June 30, 1976; and not to exceed $50,000,000 for the fiscal year ending in 1977. For fiscal years ending after 1977, there may be appropriated to carry out such functions, powers, and duties, only such sums as the Congress may hereafter authorize by law.

(Sept. 26, 1914, ch. 311, § 20, as added Jan. 4, 1975, Pub. L. 93-637, title II, § 207, 88 Stat. 2203, and amended May 29, 1976, Pub. L. 94-299, § 1, 90 Stat. 588.)

AMENDMENTS

1976—Pub. L. 94-299 substituted "$47,091,000" for "$46,000,000".

§ 58. Short title

This subchapter may be cited as the "Federal Trade Commission Act."

(Sept. 26, 1914, ch. 311, § 21, formerly § 18, as added Mar. 21, 1938, ch. 49, § 4, 52 Stat. 114, renumbered Jan. 4, 1975, Pub. L. 93-637, title II, § 202(a), 88 Stat. 2193.)

SUBCHAPTER II—PROMOTION OF EXPORT TRADE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 7 section 225; title 50 App. section 2158.

§ 61. Export trade; definitions

The words "export trade" wherever used in this subchapter mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale.

The words "trade within the United States" wherever used in this subchapter mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

The word "association" wherever used in this subchapter means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.

(Apr. 10, 1918, ch. 50, § 1, 40 Stat. 516.)

§ 62. Export trade and antitrust legislation

Nothing contained in sections 1 to 7 of this title shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *Provided*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

(Apr. 10, 1918, ch. 50, § 2, 40 Stat. 517.)

CODIFICATION

"Sections 1 to 7 of this title" was in the original a reference to "the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July second, eighteen hundred and ninety", which is known as the Sherman Act.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 65 of this title.

§ 63. Acquisition of stock of export trade corporation

Nothing contained in section 18 of this title shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

(Apr. 10, 1918, ch. 50, § 3, 40 Stat. 517.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 65 of this title.

§ 64. Unfair methods of competition in export trade

The prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the Federal Trade Commission Act [15 U.S.C. 41 et seq.] shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

(Apr. 10, 1918, ch. 50, § 4, 40 Stat. 517.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

CODIFICATION

"Federal Trade Commission Act [15 U.S.C. 41 et seq.]" was substituted for "Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September twenty-sixth, nineteen hundred and fourteen" on authority of section 18 of that Act [15 U.S.C. 58].

§ 65. Information required from export trade corporation; powers of Federal Trade Commission

Every association which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and bylaws, and if unincorporated, a copy of its articles or contract of association, and on the 1st day of January of each year every association engaged solely in export trade shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the Commission such information as the Commission may require as to its organization business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of sections 62 and 63 of this title, and it shall also forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said Commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(Apr. 10, 1918, ch. 50, § 5, 40 Stat. 517; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

CODIFICATION

"Federal Trade Commission Act [15 U.S.C. 41 et seq.]" was substituted for "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," on authority of section 18 of that Act [15 U.S.C. 58].

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorneys" for "district attorneys". See section 541 of Title 28, Judiciary and Judicial Procedure.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§ 66. Short title

This subchapter may be cited as the "Webb-Pomerene Act".

(Apr. 10, 1918, ch. 50, § 6, as added Sept. 30, 1976, Pub. L. 94-435, title III, § 305(c), 90 Stat. 1397.)

SUBCHAPTER III—LABELING OF WOOL PRODUCTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 70 of this title.

§ 68. Definitions

As used in this subchapter—

(a) The term "person" means an individual, partnership, corporation, association, or any other form of business enterprise, plural or singular, as the case demands.

(b) The term "wool" means the fiber from the fleece of the sheep or lamb or hair of the Angora or Cashmere goat (and may include the so-called specialty fibers from the hair of the camel, alpaca, llama, and vicuna) which has never been reclaimed from any woven or felted wool product.

(c) The term "reprocessed wool" means the resulting fiber when wool has been woven or felted into a wool product which, without ever having been utilized in any way by the ultimate consumer, subsequently has been made into a fibrous state.

(d) The term "reused wool" means the resulting fiber when wool or reprocessed wool has been spun, woven, knitted, or felted into a wool product which, after having been used in any way by the ultimate consumer, subsequently has been made into a fibrous state.

(e) The term "wool product" means any product, or any portion of a product, which contains, purports to contain, or in any way is represented as containing wool, reprocessed wool, or reused wool.

(f) The term "Commission" means the Federal Trade Commission.

(g) The term "Federal Trade Commission Act" means the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914, as amended, and the Federal Trade Commission Act approved March 21, 1938 [15 U.S.C. 41 et seq.].

(h) The term "commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(i) The term "Territory" includes the insular possessions of the United States and also any Territory of the United States.

(Oct. 14, 1940, ch. 871, § 2, 54 Stat. 1128.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

EFFECTIVE DATE

Section 12 of act Oct. 14, 1940, provided that: "This Act [this subchapter] shall take effect nine months after the date of its passage."

SHORT TITLE

Section 1 of act Oct. 14, 1940, provided that: "This Act [this subchapter] may be cited as the 'Wool Products Labeling Act of 1939'."

SEPARABILITY OF PROVISIONS

Section 13 of act Oct. 14, 1940, provided that: "If any provision of this Act [this subchapter], or the application thereof to any person, partnership, corporation, or circumstance is held invalid, the remainder of the Act and the application of such provision to any other person, partnership, corporation, or circumstance shall not be affected thereby."

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§ 68a. Misbranding declared unlawful

The introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution, in commerce, of any wool product which is misbranded within the meaning of this subchapter or the rules and regulations hereunder, is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.]; and any person who shall manufacture or deliver for shipment or ship or sell or offer for sale in commerce, any such wool product which is misbranded within the meaning of this subchapter and the rules and regulations hereunder is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act.

This section shall not apply—

(a) To any common carrier or contract carrier in respect to a wool product shipped or delivered for shipment in commerce in the ordinary course of its business; or

(b) To any person manufacturing, delivering for shipment, shipping, selling, or offering for sale, for exportation from the United States to any foreign country a wool product branded in accordance with the specifications of the purchaser and in accordance with the laws of such country.

(Oct. 14, 1940, ch. 871, § 3, 54 Stat. 1129.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is classified to subchapter I (§ 41 et seq.) of this chapter.

CROSS REFERENCES

Prevention of unfair methods of competition and unfair or deceptive acts or practices, see section 45 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 68b, 68e, 68g, 68h of this title.

§ 68b. Misbranded wool products

(a) False identification; affixation of label, etc., contents

A wool product shall be misbranded—

(1) If it is falsely or deceptively stamped, tagged, labeled, or otherwise identified.

(2) If a stamp, tag, label, or other means of identification, or substitute therefor under section 68c of this title, is not on or affixed to the wool product and does not show—

(A) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; and (5) the aggregate of all other fibers: *Provided,* That deviation of the fiber contents of the wool product from percentages stated on the stamp, tag, label, or other means of identification, shall not be misbranding under this section if the person charged with misbranding proves such deviation resulted from unavoidable variations in manufacture and despite the exercise of due care to make accurate the statements on such stamp, tag, label, or other means of identification.

(B) the maximum percentage of the total weight of the wool product, of any nonfibrous loading, filling, or adulterating matter.

(C) the name of the manufacturer of the wool product and/or the name of one or more persons subject to section 68a of this title with respect to such wool product.

(3) In the case of a wool product containing a fiber other than wool, if the percentages by weight of the wool contents thereof are not shown in words and figures plainly legible.

(4) In the case of a wool product represented as wool, if the percentages by weight of the wool content thereof are not shown in words and figures plainly legible, or if the total fiber weight of such wool product if not 100 per centum wool exclusive of ornamentation not exceeding 5 per centum of such total fiber weight.

(b) Additional information

In addition to information required in this section, the stamp, tag, label, or other means of identification, or substitute therefor under section 68c of this title, may contain other information not violating the provisions of this subchapter or the rules and regulations of the Commission.

(c) Substitute identification

If any person subject to section 68a of this title with respect to a wool product finds or has reasonable cause to believe its stamp, tag, label, or other means of identification, or substitute therefor under section 68c of this title, does not contain the information required by this subchapter, he may replace same with a substitute containing the information so required.

(d) Designations on linings, paddings, etc.

This section shall not be construed as requiring designation on garments or articles of apparel of fiber content of any linings, paddings, stiffening, trimmings, or facings, except those concerning which express or implied representations of fiber content are customarily made, nor as requiring designation of fiber content of products which have an insignificant or inconsequential textile content: *Provided,* That if any such article or product purports to contain or in any manner is represented as containing wool, this section shall be applicable thereto and the information required shall be separately set forth and segregated.

The Commission, after giving due notice and opportunity to be heard to interested persons, may determine and publicly announce the classes of such articles concerning which express or implied representations of fiber content are customarily made, and those products which have an insignificant or inconsequential textile content.

(Oct. 14, 1940, ch. 871, § 4, 54 Stat. 1129.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 68c of this title.

§ 68c. Affixing of stamp, tag, label, or other identification

Any person manufacturing for introduction, or first introducing into commerce a wool product shall affix thereto the stamp, tag, label, or other means of identification required by this subchapter, and the same, or substitutes therefor containing identical information with respect to content of the wool product or any other products contained therein in an amount of 5 per centum or more by weight and other information required under section 68b of this title, shall be and remain affixed to such wool product, whether it remains in its original state or is contained in garments or other articles made in whole or in part therefrom, until sold to the consumer: *Provided*, That the name of the manufacturer of the wool product need not appear on the substitute stamp, tag, or label if the name of the person who affixes the substitute appears thereon.

Any person who shall cause or participate in the removal or mutilation of any stamp, tag, label, or other means of identification affixed to a wood [1] product with intent to violate the provisions of this subchapter, is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(Oct. 14, 1940, ch. 871, § 5, 54 Stat. 1130.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is classified to subchapter I (§ 41 et seq.) of this chapter.

CROSS REFERENCES

Prevention of unfair methods of competition and unfair or deceptive acts or practices, see section 45 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 68b, 68e, 68h of this title.

§ 68d. Enforcement of subchapter

(a) Except as otherwise specifically provided herein, this subchapter shall be enforced by the Federal Trade Commission under rules, regulations, and procedure provided for in the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

The Commission is authorized and directed to prevent any person from violating the provisions of this subchapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] were incorporated into and made a part of this subchapter; and any such person violating the provisions of this subchapter shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though the applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this subchapter.

The Commission is authorized and directed to make rules and regulations for the manner and form of disclosing information required by this subchapter, and for segregation of such information for different portions of a wool product as may be necessary to avoid deception or confusion, and to make such further rules and regulations under and in pursuance of the terms of this subchapter as may be necessary and proper for administration and enforcement.

The Commission is also authorized to cause inspections, analyses, tests, and examinations to be made of any wool products subject to this subchapter; and to cooperate with any department or agency of the Government, with any State, Territory, or possession, or with the District of Columbia; or with any department, agency, or political subdivision thereof; or with any person.

(b) Every manufacturer of wool products shall maintain proper records showing the fiber content as required by this subchapter of all wool products made by him, and shall preserve such records for at least three years.

The neglect or refusal to maintain and so preserve such records is unlawful, and any such manufacturer who neglects or refuses to maintain and so preserve such records shall forfeit to the United States the sum of $100 for each day of such failure, which shall accrue to the United States and be recoverable in a civil action.

(Oct. 14, 1940, ch. 871, § 6, 54 Stat. 1131.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a), is classified to subchapter I (§ 41 et seq.) of this chapter.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

CROSS REFERENCES

Litigation by Commission or Attorney General, see section 56 of this title.

Penalties for nonobeyance of Commission's subpoenas, making false entries in reports, see section 50 of this title.

Power of Commission to examine and copy documentary evidence, take depositions, issue subpoenas; judicial enforcement of its orders, see section 49 of this title.

Power of Commission to make rules and regulations, see section 46 of this title.

§ 68e. Condemnation and injunction proceedings

(a) Any wool products shall be liable to be proceeded against in the district court of the United States for the district in which found, and to be seized for confiscation by process of libel for condemnation, if the Commission has reasonable cause to believe such wool products are being manufactured or held for shipment, or shipped, or held for sale or exchange after shipment, in commerce in violation of the provisions of this subchapter, and if after notice from the Commission the provisions of this subchapter with respect to said products are not shown to be complied with. Proceedings in such libel cases shall conform as nearly as may be to suits in rem in admiralty, and may be brought by the Commission.

If such wool products are condemned by the court, they shall be disposed of, in the discretion of the court, by destruction; by sale; by delivery to the owner or claimant thereof upon payment of legal costs and charges and upon execution of good and sufficient bond to the effect that such wool products will not be disposed of until properly stamped, tagged, labeled, or otherwise identified under the provisions of this subchapter; or by such charitable disposition as the court may deem proper. If such wool products are disposed of by sale, the proceeds, less legal costs and charges, shall be paid into the Treasury of the United States.

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[1] So in original. Probably should be "wool".

(b) Whenever the Commission has reason to believe that—

(1) Any person is violating, or is about to violate, sections 68a, 68c, 68f, or 68g of this title, and that

(2) It would be to the public interest to enjoin such violation until complaint is issued by the Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] and such complaint dismissed by the Commission or set aside by the court on review, or until order to cease and desist made thereon by the Commission has become final within the meaning of the Federal Trade Commission Act,

the Commission may bring suit in the district court of the United States or in the United States court of any Territory, for the district or Territory in which such person resides or transacts business, to enjoin such violation, and upon proper showing a temporary injunction or restraining order shall be granted without bond.

(Oct. 14, 1940, ch. 871, § 7, 54 Stat. 1131.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b)(2), is classified to subchapter I (§ 41 et seq.) of this chapter.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§ 68f. Exclusion of misbranded wool products

All wool products imported into the United States, except those made more than twenty years prior to such importation, shall be stamped, tagged, labeled, or otherwise identified in accordance with the provisions of this subchapter and all invoices of such wool products required under the Act of June 17, 1930 (c. 497, title IV, 46 Stat. 719), shall set forth, in addition to the matter therein specified, the information with respect to said wool products required under the provisions of this subchapter, which information shall be in the invoices prior to their certification under said Act of June 17, 1930.

The falsification of, or failure to set forth, said information in said invoices, or the falsification or perjury of the consignee's declaration provided for in said Act of June 17, 1930, insofar as it relates to said information, shall be an unfair method of competition, and an unfair and deceptive act, or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.]; and any person who falsifies, or fails to set forth, said information in said invoices, or who falsifies or perjures said consignee's declaration insofar as it relates to said information, may thenceforth be prohibited by the Commission from importing, or participating in the importation of, any wool products into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said wool products and any duty thereon, conditioned upon compliance with the provisions of this subchapter.

A verified statement from the manufacturer or producer of such wool products showing their fiber content as required under the provisions of this subchapter may be required under regulations prescribed by the Secretary of the Treasury.

(Oct. 14, 1940, ch. 871, § 8, 54 Stat. 1132.)

REFERENCES IN TEXT

Provisions covering invoices of wool products required under the Act of June 17, 1930 (c. 497, title IV, 46 Stat. 719), referred to in text, are set out as section 1481 et seq. of Title 19, Customs Duties.

Provisions covering certification of invoices under the Act of June 17, 1930, referred to in text, are set out as section 1482 of Title 19.

Provisions covering the consignee's declaration under the Act of June 17, 1930, referred to in text, are set out in section 1485 of Title 19.

The Federal Trade Commission Act, referred to in text, is classified to subchapter I (§ 41 et seq.) of this chapter.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

CROSS REFERENCES

Certification of invoices under Tariff Act of 1930, see section 1482 of Title 19, Customs Duties.

Consignee's declaration under Tariff Act of 1930, see section 1485 of Title 19.

Invoices generally under Tariff Act of 1930, see section 1481 et seq. of Title 19.

Prevention of unfair methods of competition and unfair or deceptive acts or practices, see section 45 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 68e, 68h of this title.

§ 68g. Guaranty

(a) No person shall be guilty under section 68a of this title if he establishes a guaranty received in good faith signed by and containing the name and address of the person residing in the United States by whom the wool product guaranteed was manufactured and/or from whom it was received, that said wool product is not misbranded under the provisions of this subchapter.

Said guaranty shall be either (1) a separate guaranty specifically designating the wool product guaranteed, in which case it may be on the invoice or other paper relating to said wool product; or (2) a continuing guaranty filed with the Commission applicable to all wool products handled by a guarantor in such form as the Commission by rules and regulations may prescribe.

(b) Any person who furnishes a false guaranty, except a person relying upon a guaranty to the same effect received in good faith signed by and containing the name and address of the person residing in the United States by whom the wool product guaranteed was manufactured and/or from whom it was received, with reason to believe the wool product falsely guaranteed may be introduced, sold, transported, or distributed in commerce, is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(Oct. 14, 1940, ch. 871, § 9, 54 Stat. 1132.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is classified to subchapter I (§ 41 et seq.) of this chapter.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

CROSS REFERENCES

Prevention of unfair methods of competition and unfair or deceptive acts or practices, see section 45 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 68e, 68h of this title.

§ 68h. Criminal penalty

Any person who willfully violates sections 68a, 68c, 68f, or 68g(b) of this title shall be guilty of a misdemeanor and upon conviction shall be fined not more than $5,000, or be imprisoned not more than one year, or both, in the discretion of the court: *Provided*, That nothing herein shall limit other provisions of this subchapter.

Whenever the Commission has reason to believe any person is guilty of a misdemeanor under this section, it shall certify all pertinent facts to the Attorney General, whose duty it shall be to cause appropriate proceedings to be brought for the enforcement of the provisions of this section against such person.

(Oct. 14, 1940, ch. 871, § 10, 54 Stat. 1133.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

CROSS REFERENCES

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 68i. Application of other laws

The provision of this subchapter shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of the United States.

(Oct. 14, 1940, ch. 871, § 11, 54 Stat. 1133.)

§ 68j. Exceptions from subchapter

None of the provisions of this subchapter shall be construed to apply to the manufacture, delivery for shipment, shipment, sale, or offering for sale any carpets, rugs, mats, or upholsteries, nor to any person manufacturing, delivering for shipment, shipping, selling, or offering for sale any carpets, rugs, mats, or upholsteries.

(Oct. 14, 1940, ch. 871, § 14, 54 Stat. 1133.)

SUBCHAPTER IV—LABELING OF FUR PRODUCTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 70b of this title.

§ 69. Definitions

As used in this subchapter—

(a) The term "person" means an individual, partnership, corporation, association, business trust, or any organized group of any of the foregoing.

(b) The term "fur" means any animal skin or part thereof with hair, fleece, or fur fibers attached thereto, either in its raw or processed state, but shall not include such skins as are to be converted into leather or which in processing shall have the hair, fleece, or fur fiber completely removed.

(c) The term "used fur" means fur in any form which has been worn or used by an ultimate consumer.

(d) The term "fur product" means any article of wearing apparel made in whole or in part of fur or used fur; except that such term shall not include such articles as the Commission shall exempt by reason of the relatively small quantity or value of the fur or used fur contained therein.

(e) The term "waste fur" means the ears, throats, or scrap pieces which have been severed from the animal pelt, and shall include mats or plates made therefrom.

(f) The term "invoice" means a written account, memorandum, list, or catalog, which is issued in connection with any commercial dealing in fur products or furs, and describes the particulars of any fur products or furs, transported or delivered to a purchaser, consignee, factor, bailee, correspondent, or agent, or any other person who is engaged in dealing commercially in fur products or furs.

(g) The term "Commission" means the Federal Trade Commission.

(h) The term "Federal Trade Commission Act" means the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914, as amended [15 U.S.C. 41 et seq.].

(i) The term "Fur Products Name Guide" means the register issued by the Commission pursuant to section 69e of this title.

(j) The term "commerce" means commerce between any State, Territory, or possession of the United States, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession or the District of Columbia.

(k) The term "United States" means the several States, the District of Columbia, and the Territories and possessions of the United States.

(Aug. 8, 1951, ch. 298, § 2, 65 Stat. 175.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

EFFECTIVE DATE

Section 14 of act Aug. 8, 1951, provided that: "This Act [this subchapter], except section 7 [section 69e of this title], shall take effect one year after the date of its enactment [Aug. 8, 1951]."

SHORT TITLE

Section 1 of act Aug. 8, 1951, provided: "That this Act [this subchapter] may be cited as the 'Fur Products Labeling Act' ".

SEPARABILITY OF PROVISIONS

Section 13 of act Aug. 8, 1951, provided that: "If any provision of this Act [this subchapter] or the application thereof to any person or circumstance is held invalid, the remainder of the Act [this subchapter] and the application of such provision to any other person or circumstance shall not be affected thereby."

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§ 69a. Violations of Federal Trade Commission Act

(a) Introduction or manufacture for introduction into commerce, sale, advertising or offering for sale in commerce

The introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product which is misbranded or falsely or deceptively advertised or invoiced, within the meaning of this subchapter or the rules and regulations prescribed under section 69f(b) of this title, is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(b) Manufacture for sale, sale, advertising, offering for sale, transportation or distribution

The manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, and which is misbranded or falsely or deceptively advertised or invoiced, within the meaning of this subchapter or the rules and regulations prescribed under section 69f(b) of this title, is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(c) Introduction into commerce, sale, advertising or offering for sale in commerce or transportation or distribution

The introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur which is falsely or deceptively advertised or falsely or deceptively invoiced, within the meaning of this subchapter or the rules and regulations prescribed under section 69f(b) of this title, is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(d) Removal or mutilation of label

Except as provided in subsection (e) of this section, it shall be unlawful to remove or mutilate, or cause or participate in the removal or mutilation of, prior to the time any fur product is sold and delivered to the ultimate consumer, any label required by this subchapter to be affixed to such fur product, and any person violating this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(e) Substitution of labels; records

Any person introducing, selling, advertising, or offering for sale, in commerce, or processing for commerce, a fur product, or any person selling, advertising, offering for sale or processing a fur product which has been shipped and received in commerce, may substitute for the label affixed to such product pursuant to section 69b of this title, a label conforming to the requirements of such section, and such label may show in lieu of the name or other identification shown pursuant to section 69b(2)(E) of this title on the label so removed, the name or other identification of the person making the substitution. Any person substituting a label shall keep such records as will show the information set forth on the label that he removed and the name or names of the person or persons from whom such fur product was received, and shall preserve such records for at least three years. Neglect or refusal to maintain and preserve such records is unlawful, and any person who shall fail to maintain and preserve such records shall forfeit to the United States the sum of $100 for each day of such failure which shall accrue to the United States and be recoverable by a civil action. Any person substituting a label who shall fail to keep and preserve such records, or who shall by such substitution misbrand a fur product, shall be guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(f) Application of section to common carrier or freight forwarder

Subsections (a), (b), and (c) of this section shall not apply to any common carrier, contract carrier or freight forwarder in respect of a fur product or fur shipped, transported, or delivered for shipment in commerce in the ordinary course of business.

(Aug. 8, 1951, ch. 298, § 3, 65 Stat. 176.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is classified to subchapter I (§ 41 et seq.) of this chapter.

CROSS REFERENCES

Prevention of unfair methods of competition and unfair or deceptive acts or practices, see section 45 of this title.

Section Referred to in Other Sections

This section is referred to in sections 69f, 69g, 69h, 69i of this title.

§ 69b. Misbranded fur products

For the purposes of this subchapter, a fur product shall be considered to be misbranded—

(1) if it is falsely or deceptively labeled or otherwise falsely or deceptively identified, or if the label contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product;

(2) if there is not affixed to the fur product a label showing in words and figures plainly legible—

(A) the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 69e(c) of this title;

(B) that the fur product contains or is composed of used fur, when such is the fact;

(C) that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(D) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(E) the name, or other identification issued and registered by the Commission, of one or more of the persons who manufacture such fur product for introduction into commerce, introduce it into commerce, sell it in commerce, advertise or offer it for sale in commerce, or transport or distribute it in commerce;

(F) the name of the country of origin of any imported furs used in the fur product;

(3) if the label required by paragraph (2)(A) of this section sets forth the name or names of any animal or animals other than the name or names provided for in such paragraph.

(Aug. 8, 1951, ch. 298, § 4, 65 Stat. 177.)

Transfer of Functions

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

Cross References

Prevention of unfair methods of competition and unfair or deceptive acts or practices, see section 45 of this title.

Section Referred to in Other Sections

This section is referred to in sections 69a, 69d of this title.

§ 69c. False advertising and invoicing

(a) For the purposes of this subchapter, a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement, representation, public announcement, or notice which is intended to aid, promote, or assist directly or indirectly in the sale or offering for sale of such fur product or fur—

(1) does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 69e(c) of this title;

(2) does not show that the fur is used fur or that the fur product contains used fur, when such is the fact;

(3) does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur when such is the fact;

(4) does not show that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(5) contains the name or names of any animal or animals other than the name or names specified in paragraph (1) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur;

(6) does not show the name of the country of origin of any imported furs or those contained in a fur product.

(b) For the purposes of this subchapter, a fur product or fur shall be considered to be falsely or deceptively invoiced—

(1) if such fur product or fur is not invoiced to show—

(A) the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 69e(c) of this title;

(B) that the fur product contains or is composed of used fur, when such is the fact;

(C) that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(D) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(E) the name and address of the person issuing such invoice;

(F) the name of the country of origin of any imported furs or those contained in a fur product;

(2) if such invoice contains the name or names of any animal or animals other than the name or names specified in paragraph (1)(A) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur.

(Aug. 8, 1951, ch. 298, § 5, 65 Stat. 178.)

Cross References

Prevention of unfair methods of competition and unfair or deceptive acts or practices, see section 45 of this title.

Section Referred to in Other Sections

This section is referred to in section 69d of this title.

§ 69d. Fur products imported into United States

(a) Necessity of proper labelling; additional information

Fur products imported into the United States shall be labeled so as not to be misbranded within the meaning of section 69b of this title; and all invoices of fur products and furs required under title IV of the Tariff Act of 1930, as amended [19 U.S.C. 1401 et seq.], shall set forth, in addition to the matters therein specified, information conforming with the requirements of section 69c(b) of this title, which information shall be included in the invoices prior to their certification under the Tariff Act of 1930, as amended [19 U.S.C. 1202 et seq.].

(b) Violations of Federal Trade Commission Act

The falsification of, or failure to set forth, said information in said invoices, or the falsification or perjury of the consignee's declaration provided for in the Tariff Act of 1930, as amended [19 U.S.C. 1202 et seq.], insofar as it relates to said information, shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.]; and any person who falsifies, or fails to set forth, said information in said invoices, or who falsifies or perjures said consignee's declaration insofar as it relates to said information, may thenceforth be prohibited by the Commission from importing, or participating in the importation of, any fur products or furs into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said fur products and furs, and any duty thereon, conditioned upon compliance with the provisions of this section.

(c) Verified statement of compliance

A verified statement from the manufacturer, producer of, or dealer in, imported fur products and furs showing information required under the provisions of this subchapter may be required under regulations prescribed by the Secretary of the Treasury.

(Aug. 8, 1951, ch. 298, § 6, 65 Stat. 178.)

REFERENCES IN TEXT

Title IV of the Tariff Act of 1930, referred to in subsec. (a), is classified to subtitle III (§ 1401 et seq.) of chapter 4 of Title 19, Customs Duties.

The Tariff Act of 1930, referred to in subsecs. (a), (b), is classified to chapter 4 (§ 1202 et seq.) of title 19.

The Federal Trade Commission Act, referred to in subsec. (b), is classified to subchapter I (§ 41 et seq.) of this chapter.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

CROSS REFERENCES

Certification of invoices under Tariff Act of 1930, see section 1482 of Title 19, Customs Duties.

Consignee's declaration under Tariff Act of 1930, see section 1485 of Title 19.

Invoices generally under Tariff Act of 1930, see section 1481 et seq. of Title 19.

Prevention of unfair methods of competition and unfair or deceptive acts or practices, see section 45 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 69f, 69g, 69i of this title.

§ 69e. Name guide for fur products

(a) Fur Products Name Guide

The Commission shall, with the assistance and cooperation of the Department of Agriculture and the Department of the Interior, within six months after August 8, 1951, issue, after holding public hearings, a register setting forth the names of hair, fleece, and fur-bearing animals, which shall be known as the Fur Products Name Guide. The names used shall be the true English names for the animals in question, or in the absence of a true English name for an animal, the name by which such animal can be properly identified in the United States.

(b) Additions and deletions; public hearing

The Commission may, from time to time, with the assistance and cooperation of the Department of Agriculture and Department of the Interior, after holding public hearings, add to or delete from such register the name of any hair, fleece, or fur-bearing animal.

(c) Prevention of confusion or deception

If the name of an animal (as set forth in the Fur Products Name Guide) connotes a geographical origin or significance other than the true country or place of origin of such animal, the Commission may require whenever such name is used in setting forth the information required by this subchapter, such qualifying statements as it may deem necessary to prevent confusion or deception.

(Aug. 8, 1951, ch. 298, § 7, 65 Stat. 179.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 69b, 69c of this title.

§ 69f. Enforcement of subchapter

(a) Enforcement by Federal Trade Commission

(1) Except as otherwise specifically provided in this subchapter, sections 69a, 69d, and 69h(b) of this title shall be enforced by the Federal Trade Commission under rules, regulations, and procedure provided for in the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(2) The Commission is authorized and directed to prevent any person from violating the provisions of sections 69a, 69d, and 69h(b) of this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] were incorporated into and made a part of this subchapter; and any such person violating any provision of section 69a, 69d, or 69h(b) of this title shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act as though the applicable terms and provisions of the said Act were incorporated into and made a part of this subchapter.

(b) Rules and regulations for disclosure of information

The Commission is authorized and directed to prescribe rules and regulations governing the manner and form of disclosing information required by this subchapter, and such further rules and regulations as may be necessary and proper for purposes of administration and enforcement of this subchapter.

(c) Inspection, analysis, tests for fur products; cooperation with other governmental agencies

The Commission is authorized (1) to cause inspections, analyses, tests, and examinations to be made of any fur product or fur subject to this subchapter; and (2) to cooperate, on matters related to the purposes of this subchapter, with any department or agency of the Government; with any State, Territory, or possession, or with the District of Columbia; or with any department, agency, or political subdivision thereof; or with any person.

(d) Maintenance of records by manufacturer or dealer

(1) Every manufacturer or dealer in fur products or furs shall maintain proper records showing the information required by this subchapter with respect to all fur products or furs handled by him, and shall preserve such records for at least three years.

(2) The neglect or refusal to maintain and preserve such records is unlawful, and any such manufacturer or dealer who neglects or refuses to maintain and preserve such records shall forfeit to the United States the sum of $100 for each day of such failure which shall accrue to the United States and be recoverable by a civil action.

(Aug. 8, 1951, ch. 298, § 8, 65 Stat. 179.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a), is classified to subchapter I (§ 41 et seq.) of this chapter.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

CROSS REFERENCES

Power of Commission to make rules and regulations, see section 46 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 69a of this title.

§ 69g. Condemnation and injunction proceedings

(a)(1) Any fur product or fur shall be liable to be proceeded against in the district court of the United States for the district in which found, and to be seized for confiscation by process of libel for condemnation, if the Commission has reasonable cause to believe such fur product or fur is being manufactured or held for shipment, or shipped, or held for sale or exchange after shipment, in commerce, in violation of the provisions of this subchapter, and if after notice from the Commission the provisions of this subchapter with respect to such fur product or fur are not shown to be complied with. Proceedings in such libel cases shall conform as nearly as may be to suits in rem in admiralty, and may be brought by the Commission.

(2) If such fur products or furs are condemned by the court, they shall be disposed of, in the discretion of the court, by destruction, by sale, by delivery to the owner or claimant thereof upon payment of legal costs and charges and upon execution of good and sufficient bond to the effect that such fur or fur products will not be disposed of until properly marked, advertised, and invoiced as required under the provisions of this subchapter; or by such charitable disposition as the court may deem proper. If such furs or fur products are disposed of by sale, the proceeds, less legal costs and charges, shall be paid into the Treasury of the United States as miscellaneous receipts.

(b) Whenever the Commission has reason to believe that—

(1) any person is volating,[1] or is about to violate, section 69a, 69d, or 69h(b) of this title; and

(2) it would be to the public interest to enjoin such violation until complaint is issued by the Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] and such complaint dismissed by the Commission or set aside by the court on review, or until order to cease and desist made thereon by the Commission has become final within the meaning of said Act,

the Commission may bring suit in the district court of the United States or in the United States court of any Territory, for the district or Territory in which such person resides or transacts business, to enjoin such violation, and upon proper showing a temporary injunction or restraining order shall be granted without bond.

(Aug. 8, 1951, ch. 298, § 9, 65 Stat. 180.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b)(2), is classified to subchapter I (§ 41 et seq.) of this chapter.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§ 69h. Guaranty

(a) No person shall be guilty under section 69a of this title if he establishes a guaranty received in good faith signed by and containing the name and address of the person residing in the United States by whom the fur product or fur guaranteed was manufactured or from whom it was received, that said fur product is not misbranded or that said fur product or fur is not falsely advertised or invoiced under the provisions of this subchapter. Such guaranty shall be either (1) a separate guaranty specifically designating the fur product or fur guaranteed, in which case it may be on the invoice or other paper relating to such fur product or fur; or (2) a continuing guaranty filed with the Commission applicable to any fur product or fur handled by a guarantor, in such form as the Commission by rules and regulations may prescribe.

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[1] So in original. Probably should be "violating".

(b) It shall be unlawful for any person to furnish, with respect to any fur product or fur, a false guaranty (except a person relying upon a guaranty to the same effect received in good faith signed by and containing the name and address of the person residing in the United States by whom the fur product or fur guaranteed was manufactured or from whom it was received) with reason to believe the fur product or fur falsely guaranteed may be introduced, sold, transported, or distributed in commerce, and any person who violates the provisions of this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(Aug. 8, 1951, ch. 298, § 10, 65 Stat. 181.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b), is classified to subchapter I (§ 41 et seq.) of this chapter.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 69f, 69g, 69i of this title.

§ 69i. Criminal penalty

(a) Any person who willfully violates section 69a, 69d, or 69h(b) of this title shall be guilty of a misdemeanor and upon conviction shall be fined not more than $5,000, or be imprisoned not more than one year, or both, in the discretion of the court.

(b) Whenever the Commission has reason to believe any person is guilty of a misdemeanor under this section, it shall certify all pertinent facts to the Attorney General, whose duty it shall be to cause appropriate proceedings to be brought for the enforcement of the provisions of this section against such person.

(Aug. 8, 1951, ch. 298, § 11, 65 Stat. 181.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

CROSS REFERENCES

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 69j. Application of other laws

The provisions of this subchapter shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of Congress.

(Aug. 8, 1951, ch. 298, § 12, 65 Stat. 181.)

SUBCHAPTER V—TEXTILE FIBER PRODUCTS IDENTIFICATION

§ 70. Definitions

As used in this subchapter—

(a) The term "person" means an individual, partnership, corporation, association or any other form of business enterprise.

(b) The term "fiber" or "textile fiber" means a unit of matter which is capable of being spun into a yarn or made into a fabric by bonding or by interlacing in a variety of methods including weaving, knitting, braiding, felting, twisting, or webbing, and which is the basic structural element of textile products.

(c) The term "natural fiber" means any fiber that exists as such in the natural state.

(d) The term "manufactured fiber" means any fiber derived by a process of manufacture from any substance which, at any point in the manufacturing process, is not a fiber.

(e) The term "yarn" means a strand of textile fiber in a form suitable for weaving, knitting, braiding, felting, webbing, or otherwise fabricating into a fabric.

(f) The term "fabric" means any material woven, knitted, felted, or otherwise produced from, or in combination with, any natural or manufactured fiber, yarn, or substitute therefor.

(g) The term "household textile articles" means articles of wearing apparel, costumes and accessories, draperies, floor coverings, furnishings, beddings, and other textile goods of a type customarily used in a household regardless of where used in fact.

(h) The term "textile fiber product" means—

(1) any fiber, whether in the finished or unfinished state, used or intended for use in household textile articles;

(2) any yarn or fabric, whether in the finished or unfinished state, used or intended for use in household textile articles; and

(3) any household textile article made in whole or in part of yarn or fabric;

except that such term does not include a product required to be labeled under the Wool Products Labeling Act of 1939 [15 U.S.C. 68 et seq.].

(i) The term "affixed" means attached to the textile fiber product in any manner.

(j) The term "Commission" means the Federal Trade Commission.

(k) The term "commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation or between the District of Columbia and any State or Territory or foreign nation.

(*l*) The term "Territory" includes the insular possessions of the United States, and also any Territory of the United States.

(m) The term "ultimate consumer" means a person who obtains a textile fiber product by purchase or exchange with no intent to sell or exchange such textile fiber product in any form.

(Pub. L. 85-897, § 2, Sept. 2, 1958, 72 Stat. 1717.)

REFERENCES IN TEXT

The Wool Products Labeling Act of 1939, referred to in subsec. (h)(3), is act Oct. 14, 1940, ch. 871, 54 Stat. 1128, which is classified generally to subchapter III (§ 68 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 68 of this title and Tables volume.

EFFECTIVE DATE

Section 15 of Pub. L. 85-897 provided that: "This Act [this subchapter] shall take effect eighteen months after enactment [Sept. 2, 1958], except for the promulgation of rules and regulations by the Commission, which shall be promulgated within nine months after the enactment of this Act. The Commission shall provide for the exception of any textile fiber product acquired prior to the effective date of this Act."

SHORT TITLE

Section 1 of Pub. L. 85-897 provided: "That this Act [this subchapter] may be cited as the 'Textile Fiber Products Identification Act'."

SEPARABILITY OF PROVISIONS

Section 13 of Pub. L. 85-897 provided that: "If any provision of this Act [this subchapter], or the application thereof to any person, as that term is herein defined, is held invalid, the remainder of the Act and the application of the remaining provisions to any person shall not be affected thereby."

§ 70a. Violations of Federal Trade Commission Act

(a) Introduction or manufacture for introduction into commerce, sale, advertising or offering for sale in commerce

The introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product which is misbranded or falsely or deceptively advertised within the meaning of this subchapter or the rules and regulations promulgated thereunder, is unlawful, and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(b) Sale, offering for sale, advertising, delivery, transportation of products advertised for sale in commerce

The sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce, and which is misbranded or falsely or deceptively advertised, within the meaning of this subchapter or the rules and regulations promulgated thereunder, is unlawful, and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(c) Sale, offering for sale, advertising, delivery, transportation of products after shipment in commerce

The sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, which is misbranded or falsely or deceptively advertised, within the meaning of this subchapter or the rules and regulations promulgated thereunder, is unlawful, and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(d) Application of section to common carrier, freight forwarder, etc.

This section shall not apply—

(1) to any common carrier or contract carrier or freight forwarder with respect to a textile fiber product received, shipped, delivered, or handled by it for shipment in the ordinary course of its business;

(2) to any processor or finisher in performing a contract for the account of a person subject to the provisions of this subchapter if the processor or finisher does not change the textile fiber content of the textile fiber product contrary to the terms of such contract;

(3) with respect to the manufacture, delivery for transportation, transportation, sale, or offering for sale of a textile fiber product for exportation from the United States to any foreign country;

(4) to any publisher or other advertising agency or medium for the dissemination of advertising or promotional material, except the manufacturer, distributor, or seller of the textile fiber product to which the false or deceptive advertisement relates, if such publisher or other advertising agency or medium furnishes to the Commission, upon request, the name and post office address of the manufacturer, distributor, seller, or other person residing in the United States, who caused the dissemination of the advertising material; or

(5) to any textile fiber product until such product has been produced by the manufacturer or processor in the form intended for sale or delivery to, or for use by, the ultimate consumer: *Provided*, That this exemption shall apply only if such textile fiber product is covered by an invoice or other paper relating to the marketing or handling of the textile fiber product and such invoice or paper correctly discloses the information with respect to the textile fiber product which would otherwise be required under section 70b of this title to be on the stamp, tag, label, or other identification and the name and address of the person issuing the invoice or paper.

(Pub. L. 85-897, § 3, Sept. 2, 1958, 72 Stat. 1718.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) to (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70b, 70f, 70h, 70i of this title.

§ 70b. Misbranded and falsely advertised textile fiber products

(a) False or deceptive identification

Except as otherwise provided in this subchapter, a textile fiber product shall be misbranded if it is falsely or deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

(b) Stamp, tag, label or other means of identification; contents

Except as otherwise provided in this subchapter, a textile fiber product shall be misbranded if a stamp, tag, label, or other means of identification, or substitute therefor authorized by section 70c of this title, is not on or affixed to the product showing in words and figures plainly legible, the following:

(1) The constituent fiber or combination of fibers in the textile fiber product, designating with equal prominence each natural or manufactured fiber in the textile fiber product by its generic name in the order of predominance by the weight thereof if the weight of such fiber is 5 per centum or more of the total fiber weight of the product, but nothing in this section shall be construed as prohibiting the use of a nondeceptive trademark in conjunction with a designated generic name: *Provided,* That exclusive of permissible ornamentation, any fiber or group of fibers present in an amount of 5 per centum or less by weight of the total fiber content shall not be designated by the generic name or the trademark of such fiber or fibers, but shall be designated only as "other fiber" or "other fibers" as the case may be, but nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance where present in the amount contained in such product.

(2) The percentage of each fiber present, by weight, in the total fiber content of the textile fiber product, exclusive of ornamentation not exceeding 5 per centum by weight of the total fiber content: *Provided,* That, exclusive of permissible ornamentation, any fiber or group of fibers present in an amount of 5 per centum or less by weight of the total fiber content shall not be designated by the generic name or trademark of such fiber or fibers, but shall be designated only as "other fiber" or "other fibers" as the case may be but nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance where present in the amount stated: *Provided further,* That in the case of a textile fiber product which contains more than one kind of fiber, deviation in the fiber content of any fiber in such product, from the amount stated on the stamp, tag, label, or other identification shall not be a misbranding under this section unless such deviation is in excess of reasonable tolerances which shall be established by the Commission: *And provided further,* That any such deviation which exceeds said tolerances shall not be a misbranding if the person charged proves that the deviation resulted from unavoidable variations in manufacture and despite due care to make accurate the statements on the tag, stamp, label, or other identification.

(3) The name, or other identification issued and registered by the Commission, of the manufacturer of the product or one or more persons subject to section 70a of this title with respect to such product.

(4) If it is an imported textile fiber product the name of the country where processed or manufactured.

(c) False or deceptive advertisement

For the purposes of this subchapter, a textile fiber product shall be considered to be falsely or deceptively advertised if any disclosure or implication of fiber content is made in any written advertisement which is used to aid, promote, or assist directly or indirectly in the sale or offering for sale of such textile fiber product, unless the same information as that required to be shown on the stamp, tag, label, or other identification under subsection (b) (1) and (2) of this section is contained in the heading, body, or other part of such written advertisement, except that the percentages of the fiber present in the textile fiber product need not be stated.

(d) Additional information allowed

In addition to the information required in this section, the stamp, tag, label, or other means of identification, or advertisement may contain other information not violating the provisions of this subchapter.

(e) Labelling of packages

This section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each textile fiber product contained in a package if (1) such textile fiber products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the textile fiber products contained therein, the information required by subsection (b) of this section, and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each textile fiber product contained therein.

(f) Fabric severed from bolts, pieces or rolls of fabric

This section shall not be construed as requiring designation of the fiber content of any portion of fabric, when sold at retail, which is severed from bolts, pieces, or rolls of fabric labeled in accordance with the provisions of this section at the time of such sale: *Provided,* That if any portion of fabric severed from a bolt, piece, or roll of fabric is in any manner represented as containing percentages of natural or manufactured fibers, other than that which is set forth on the labeled bolt, piece, or roll, this section shall be applicable thereto, and the information required shall be separately set forth and segregated as required by this section.

(g) Advertisement of textile product by use of name or symbol of fur-bearing animal

For the purposes of this subchapter, a textile fiber product shall be considered to be falsely or deceptively advertised if the name or symbol of any fur-bearing animal is used in the advertisement of such product unless such product, or the part thereof in connection with which the name or symbol of a fur-bearing animal is used, is a fur or fur product within the meaning of the Fur Products Labeling Act [15 U.S.C. 69 et seq.]: *Provided, however,* That where a textile fiber product contains the hair or fiber of a fur-bearing animal, the name of such animal, in conjunction with the word "fiber", "hair", or "blend", may be used.

(h) Reused stuffing

For the purposes of this subchapter, a textile fiber product shall be misbranded if it is used as stuffing in any upholstered product, mattress, or cushion after having been previously used as stuffing in any other upholstered product, mattress, or cushion, unless the upholstered product, mattress, or cushion containing such textile fiber product bears a stamp, tag, or label approved by the Commission indicating in words plainly legible that it contains reused stuffing.

(Pub. L. 85-897, § 4, Sept. 2, 1958, 72 Stat. 1719; Pub. L. 89-35, §§ 1, 2, June 5, 1965, 79 Stat. 124.)

REFERENCES IN TEXT

The Fur Products Labeling Act, referred to in subsec. (g), is act Aug. 8, 1951, ch. 298, 65 Stat. 175, which is classified generally to subchapter IV (§ 69 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 69 of this title and Tables volume.

AMENDMENTS

1965—Subsec. (b)(1). Pub. L. 89-35, § 1, inserted the words ", but nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance where present in the amount contained in such product".

Subsec. (b)(2). Pub. L. 89-35, § 2, inserted the words ", but nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance where present in the amount stated".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70a, 70c, 70g, 70j of this title.

§ 70c. Removal of stamp, tag, label, or other identification

(a) Removal or mutilation after shipment in commerce

After shipment of a textile fiber product in commerce it shall be unlawful, except as provided in this subchapter, to remove or mutilate, or cause or participate in the removal or mutilation of, prior to the time any textile fiber product is sold and delivered to the ultimate consumer, any stamp, tag, label, or other identification required by this subchapter to be affixed to such textile fiber product, and any person violating this section shall be guilty of an unfair method of competition, and an unfair or deceptive act or practice, under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(b) Substitition of stamp, tag, etc.

Any person—

(1) introducing, selling, advertising, or offering for sale, in commerce, or importing into the United States, a textile fiber product subject to the provisions of this subchapter, or

(2) selling, advertising, or offering for sale a textile fiber product whether in its original state or contained in other textile fiber products, which has been shipped, advertised, or offered for sale, in commerce,

may substitute for the stamp, tag, label, or other means of identification required to be affixed to such textile product pursuant to section 70b(b) of this title, a stamp, tag, label, or other means of identification conforming to the requirements of section 70b(b) of this title, and such substituted stamp, tag, label, or other means of identification shall show the name or other identification issued and registered by the Commission of the person making the substitution.

(c) Affixing of stamp, tag, etc. to individual unit of broken package

If any person other than the ultimate consumer breaks a package which bears a stamp, tag, label, or other means of identification conforming to the requirements of section 70b of this title, and if such package contains one or more units of a textile fiber product to which a stamp, tag, label, or other identification conforming to the requirements of section 70b of this title is not affixed, such person shall affix a stamp, tag, label, or other identification bearing the information on the stamp, tag, label, or other means of identification attached to such broken package to each unit of textile fiber product taken from such broken package.

(Pub. L. 85-897, § 5, Sept. 2, 1958, 72 Stat. 1720.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a), is classified to subchapter I (§ 41 et seq.) of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70b, 70d, 70f, 70i of this title.

§ 70d. Records

(a) Maintenance and preservation by manufacturer

Every manufacturer of textile fiber products subject to this subchapter shall maintain proper records showing the fiber content as required by this subchapter of all such products made by him, and shall preserve such records for at least three years.

(b) Maintenance and preservation by person substituting stamp, tag, etc.

Any person substituting a stamp, tag, label, or other identification pursuant to section 70c(b) of this title shall keep such records as will show the information set forth on the stamp, tag, label, or other identification that he removed and the name or names of the person or persons from whom such textile fiber product was received, and shall preserve such records for at least three years.

(c) Neglect or refusal to maintain or preserve records

The neglect or refusal to maintain or preserve the records required by this section is unlawful, and any person neglecting or refusing to maintain such records shall be guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce, under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(Pub. L. 85-897, § 6, Sept. 2, 1958, 72 Stat. 1721.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (c), is classified to subchapter I (§ 41 et seq.) of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70f, 70i of this title.

§ 70e. Enforcement

(a) Enforcement by Federal Trade Commission

Except as otherwise specifically provided herein, this subchapter shall be enforced by the Federal Trade Commission under rules, regulations, and procedure provided for in the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(b) Terms of Federal Trade Commission Act incorporated into this subchapter

The Commission is authorized and directed to prevent any person from violating the provisions of this subchapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] were incorporated into and made a part of this subchapter; and any such person violating the provisions of this subchapter shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act, in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though the applicable terms and provisions of the said Federal Trade Commission Act were incorporated into and made a part of this subchapter.

(c) Rules and regulations by Federal Trade Commission

The Commission is authorized and directed to make such rules and regulations, including the establishment of generic names of manufactured fibers, under and in pursuance of the terms of this subchapter as may be necessary and proper for administration and enforcement.

(d) Inspection, analyses, tests, etc.

The Commission is authorized to cause inspections, analyses, tests, and examinations to be made of any product subject to this subchapter.

(Pub. L. 85-897, § 7, Sept. 2, 1958, 72 Stat. 1721.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is classified to subchapter I (§ 41 et seq.) of this chapter.

§ 70f. Injunction proceedings.

Whenever the Commission has reason to believe—

(a) that any person is doing, or is about to do, an act which by section 70a, 70c, 70d, 70g, or 70h(b) of this title is declared to be unlawful; and

(b) that it would be to the public interest to enjoin the doing of such act until complaint is issued by the Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] and such complaint is dismissed by the Commission or set aside by the court on review or until an order to cease and desist made thereon by the Commission has become final within the meaning of the Federal Trade Commission Act,

the Commission may bring suit in the district court of the United States or in the United States court of any Territory, for the district or Territory in which such person resides or transacts business, to enjoin the doing of such act and upon proper showing a temporary injunction or restraining order shall be granted without bond.

(Pub. L. 85-897, § 8, Sept. 2, 1958, 72 Stat. 1721.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is classified to subchapter I (§ 41 et seq.) of this chapter.

§ 70g. Exclusion of misbranded textile fiber products

All textile fiber products imported into the United States shall be stamped, tagged, labeled, or otherwise identified in accordance with the provisions of section 70b of this title, and all invoices of such products required pursuant to section 1484 of title 19, shall set forth, in addition to the matter therein specified, the information with respect to said products required under the provisions of section 70b(b) of this title, which information shall be in the invoices prior to their certification, if such certification is required pursuant to section 1484 of title 19. The falsification of, or failure to set forth the required information in such invoices, or the falsification or perjury of the consignee's declaration provided for in section 1485 of title 19, insofar as it relates to such information, is unlawful, and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.]; and any person who falsifies, or perjures the consignee's declaration insofar as it relates to such information, may thenceforth be prohibited by the Commission from importing, or participating in the importation of, any textile fiber product into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said products and any duty thereon, conditioned upon compliance with the provisions of this subchapter. A verified statement from the manufacturer or producer of such products showing their fiber content as required under the provisions of this subchapter may be required under regulation prescribed by the Secretary of the Treasury.

(Pub. L. 85-897, § 9, Sept. 2, 1958, 72 Stat. 1722.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is classified to subchapter I (§ 41 et seq.) of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70f, 70i of this title.

§ 70h. Guaranty

(a) No person shall be guilty of an unlawful act under section 70a of this title if he establishes a guaranty received in good faith, signed by and containing the name and address of the person residing in the United States by whom the textile fiber product guaranteed was manufactured or from whom it was received, that said product is not misbranded or falsely invoiced under the provisions of this subchapter. Said guaranty shall be (1) a separate guaranty specifically designating the textile fiber product guaranteed, in which case it may be on the invoice or other paper relating to said product; or (2) a continuing guaranty given by seller to the buyer applicable to all textile fiber products sold to or to be sold to buyer by seller in a form as the Commission, by rules and regulations, may prescribe; or (3) a continuing guaranty filed with the Commission applicable to all textile fiber products handled by a guarantor in such form as the Commission by rules and regulations may prescribe.

(b) The furnishing of a false guaranty, except where the person furnishing such false guaranty relies on a guaranty to the same effect received in good faith signed by and containing the name and address of the person residing in the United States by whom the product guaranteed was manufactured or from whom it was received, is unlawful, and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce, within the meaning of the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(Pub. L. 85-897, § 10, Sept. 2, 1958, 72 Stat. 1722.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b), is classified to subchapter I (§ 41 et seq.) of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 70f, 70i of this title.

§ 70i. Criminal penalty

(a) Any person who willfully does an act which by section 70a, 70c, 70d, 70g, or 70h(b) of this title is declared to be unlawful shall be guilty of a misdemeanor and upon conviction shall be fined not more than $5,000 or be imprisoned not more than one year, or both, in the discretion of the court: *Provided*, That nothing in this section shall limit any other provision of this subchapter.

(b) Whenever the Commission has reason to believe that any person is guilty of a misdemeanor under this section, it may certify all pertinent facts to the Attorney General. If, on the basis of the facts certified, the Attorney General concurs in such belief, it shall be his duty to cause appropriate proceedings to be brought for the enforcement of the provisions of this section against such person.

(Pub. L. 85-897, § 11, Sept. 2, 1958, 72 Stat. 1723.)

§ 70j. Exemptions

(a) None of the provisions of this subchapter shall be construed to apply to—

(1) upholstery stuffing, except as provided in section 70b(h) of this title;

(2) outer coverings of furniture, mattresses, and box springs;

(3) linings or interlinings incorporated primarily for structural purposes and not for warmth;

(4) filling or padding incorporated primarily for structural purposes and not for warmth;

(5) stiffenings, trimmings, facings, or interfacings;

(6) backings of, and paddings or cushions to be used under, floor coverings;

(7) sewing and handicraft threads;

(8) bandages, surgical dressings, and other textile fiber products, the labeling of which is subject to the requirements of the Federal Food, Drug and Cosmetic Act of 1938, as amended [21 U.S.C. 301 et seq.];

(9) waste materials not intended for use in a textile fiber product;

(10) textile fiber products incorporated in shoes or overshoes or similar outer footwear;

(11) textile fiber products incorporated in headwear, handbags, luggage, brushes, lampshades, or toys, catamenial devices, adhesive tapes and adhesive sheets, cleaning cloths impregnated with chemicals, or diapers.

The exemption provided for any article by paragraph (3) or (4) of this subsection shall not be applicable if any representation as to fiber content of such article is made in any advertisement, label, or other means of identification covered by section 70b of this title.

(b) The Commission may exclude from the provisions of this subchapter other textile fiber products (1) which have an insignificant or inconsequential textile fiber content, or (2) with respect to which the disclosure of textile fiber content is not necessary for the protection of the ultimate consumer.

(Pub. L. 85-897, § 12, Sept. 2, 1958, 72 Stat. 1723.)

REFERENCES IN TEXT

The Federal Food, Drug and Cosmetic Act of 1938, referred to in subsec. (a)(8), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables volume.

§ 70k. Application of other laws

The provisions of this subchapter shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of the United States.

(Pub. L. 85-897, § 14, Sept. 2, 1958, 72 Stat. 1724.)

SUBCHAPTER VI—PREVENTION OF UNFAIR METHODS OF COMPETITION

§ 71. Definition

When used in this subchapter the term "person" includes partnerships, corporations, and associations.

(Sept. 8, 1916, ch. 463, § 800, 39 Stat. 798.)

§ 72. Importation or sale of articles at less than market value or wholesale price

It shall be unlawful for any person importing or assisting in importing any articles from any foreign country into the United States, commonly and systematically to import, sell or cause to be imported or sold such articles within the United States at a price substantially less than the actual market value or wholesale price of such articles, at the time of exportation to the United States, in the principal markets of the country of their production, or of other foreign countries to which they are commonly exported after adding to such market value or wholesale price, freight, duty, and other charges and expenses necessarily incident to the importation and sale thereof in the United States: *Provided*, That such act or acts be done with the intent of destroying or injuring an industry in the United States, or of preventing the establishment of an industry in the United States, or of restraining or monopolizing any part of trade and commerce in such articles in the United States.

Any person who violates or combines or conspires with any other person to violate this section is guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding $5,000, or imprisonment not exceeding one year, or both, in the discretion of the court.

Any person injured in his business or property by reason of any violation of, or combination or conspiracy to violate, this section, may sue therefor in the district court of the United States for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages sustained, and the cost of the suit, including a reasonable attorney's fee.

The foregoing provisions shall not be construed to deprive the proper State courts of jurisdiction in actions for damages thereunder.

(Sept. 8, 1916, ch. 463, § 801, 39 Stat. 798.)

CROSS REFERENCES

Misdemeanor defined, see section 1 of Title 18, Crimes and Criminal Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Costs, see rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

Effect of rule 54 on this section, see note by Advisory Committee under rule 54.

§ 73. Agreements involving restrictions in favor of imported goods

If any article produced in a foreign country is imported into the United States under any agreement, understanding, or condition that the importer thereof or any other person in the United States shall not use, purchase, or deal in, or shall be restricted in his using, purchasing, or dealing in, the articles of any other person, there shall be levied, collected, and paid thereon, in addition to the duty otherwise imposed by law, a special duty equal to double the amount of such duty: *Provided*, That the above shall not be interpreted to prevent the establishing in this country on the part of a foreign producer of an exclusive agency for the sale in the United States of the products of said foreign producer or merchant, nor to prevent such exclusive agent from agreeing not to use, purchase, or deal in the article of any other person, but this proviso shall not be construed to exempt from the provisions of this section any article imported by such exclusive agent if such agent is required by the foreign producer or if it is agreed between such agent and such foreign producer that any agreement, understanding or condition set out in this section shall be imposed by such agent upon the sale or other disposition of such article to any person in the United States.

(Sept. 8, 1916, ch. 463, § 802, 39 Stat. 799.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 74 of this title.

§ 74. Rules and regulations

The Secretary of the Treasury shall make such rules and regulations as are necessary for the carrying out of the provisions of section 73 of this title.

(Sept. 8, 1916, ch. 463, § 803, 39 Stat. 799.)

§ 75. Retaliation against country prohibiting importations

Whenever any country, dependency, or colony shall prohibit the importation of any article the product of the soil or industry of the United States and not injurious to health or morals, the President shall have power to prohibit, during the period such prohibition is in force, the importation into the United States of similar articles, or in case the United States does not import similar articles from that country, then other articles, the products of such country, dependency, or colony.

And the Secretary of the Treasury, with the approval of the President, shall make such rules and regulations as are necessary for the execution of the provisions of this section.

(Sept. 8, 1916, ch. 463, § 804, 39 Stat. 799.)

§ 76. Retaliation against restriction of importations in time of war

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any country, colony, or dependency contrary to the law and practice of nations, the importation into their own or any other country, dependency, or colony of any article the product of the soil or industry of the United States and not injurious to health or morals is prevented or restricted the President is authorized and empowered to prohibit or restrict during the period such prohibition or restriction is in force, the importation into the United States of similar or other articles, products of such country, dependency, or colony as in his opinion the public interest may require; and in such case he shall make proclamation stating the article or articles which are prohibited from importation into the United States; and any person or persons who shall import, or attempt or conspire to import, or be concerned in importing, such article or articles, into the United States contrary to the prohibition in such proclamation, shall be liable to a fine of not less than $2,000 nor more than $50,000, or to imprisonment not to exceed two years, or both, in the discretion of the court. The President may change, modify, revoke, or renew such proclamation in his discretion.

(Sept. 8, 1916, ch. 463, § 805, 39 Stat. 799.)

§ 77. Discrimination against neutral Americans in time of war

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that any vessel, American or foreign, is, on account of the laws, regulations, or practices of a belligerent Government, making or giving any undue or unreasonable preference or advantage in any respect whatsoever to any particular person, company, firm, or corporation, or any particular description of traffic in the United States or its possessions or to any citizens of the United States residing in neutral countries abroad, or is subjecting any particular person, company, firm, or corporation or any particular description of traffic in the United States or its possessions, or any citizens of the United States residing in neutral countries abroad to any undue or unreasonable prejudice, disadvantage, injury, or discrimination in regard to accepting, receiving, transporting, or delivering, or refusing to accept, receive, transfer, or deliver any cargo, freight, or passengers, or in any other respect whatsoever, he is authorized and empowered to direct the detention of such vessels by withholding clearance or by formal notice forbidding departure, and to revoke, modify, or renew any such direction.

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any belligerent country or Government, American ships or American citizens are not accorded any of the facilities of commerce which the vessels or citizens of that belligerent country enjoy in the United States or its possessions, or are not accorded by such belligerent equal privileges or facilities of trade with vessels or citizens of any nationality other than that of such belligerent, the President is authorized and empowered to withhold clearance from one or more vessels of such belligerent country until such belligerent shall restore to such American vessels and American citizens reciprocal liberty of commerce and equal facilities of trade; or the President may direct that similar privileges and facilities, if any, enjoyed by vessels or citizens of such belligerent in the United States or its possessions be refused to vessels or citizens of such belligerent; and in such case he shall make proclamation of his direction, stating the facilities and privileges which shall be refused, and the belligerent to whose vessels or citizens they are to be refused, and thereafter the furnishing of such prohibited privileges and facilities to any vessel or citizen of the belligerent named in such proclamation shall be unlawful; and he may change, modify, revoke, or renew such proclamation; and any person or persons who shall furnish or attempt or conspire to furnish or be concerned in furnishing or in the concealment of furnishing facilities or privileges to ships or persons contrary to the prohibition in such proclamation shall be liable to a fine of not less than $2,000 nor more than $50,000 or to imprisonment not to exceed two years, or both, in the discretion of the court.

In case any vessel which is detained by virtue of this subchapter shall depart or attempt to depart from the jurisdiction of the United States without clearance or other lawful authority, the owner or master or person or persons having charge or command of such vessel shall be severally liable to a fine of not less than $2,000 nor more than $10,000, or to imprisonment not to exceed two years, or both, and in addition such vessel shall be forfeited to the United States.

The President of the United States is authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this subchapter.

(Sept. 8, 1916, ch. 463, § 806, 39 Stat. 799.)

Delegation of Functions

For delegation to the Secretary of the Treasury of authority vested in the President by this section, see section 1(j), (k) of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, set out as a note under section 301 of Title 3, The President.

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SUBCHAPTER I—DOMESTIC SECURITIES

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 77ccc, 77ddd, 77fff, 77ggg, 77hhh, 77vvv, 77www, 77zzz, 78m, 78*o*, 78*o*-3, 78s, 78u, 79p, 79t, 79u, 80a-2, 80a-8, 80a-9, 80a-14, 80a-24, 80a-34, 80a-37, 80a-49, 80b-2, 80b-3 of this title; title 11 section 205; title 25 section 646; title 43 section 1625.

Subchapter Referred to in D.C. Code

This subchapter is referred to in sections 29-1112, 35-1903 of the District of Columbia Code.

§ 77a. Short title

This subchapter may be cited as the "Securities Act of 1933."

(May 27, 1933, ch. 38, title I, § 1, 48 Stat. 74.)

Cross References

Regulation of securities—

Corporation of Foreign Bondholders Act, 1933, as constituting sections 77bb to 77mm of this title, see section 77mm of this title.

Investment Advisers Act of 1940 as constituting sections 80b-1 to 80b-21 of this title, see section 80b-20 of this title.

Investment Company Act of 1940 as constituting sections 80a-1 to 80a-52 of this title and sections 72(a) and 107(f) of Title 11, Bankruptcy, see section 80a-51 of this title.

Public Utility Holding Company Act of 1935 as constituting sections 79 to 79z-6 of this title, see section 79 of this title.

Securities Exchange Act of 1934 as constituting sections 78a to 78jj of this title, see section 78a of this title.

Securities Investor Protection Act of 1970 as constituting sections 78aaa to 78*lll* of this title, see section 78aaa of this title.

Trust Indenture Act of 1939 as constituting sections 77aaa to 77bbbb of this title, see section 77aaa of this title.

Reorganization of railroads engaged in interstate commerce, this subchapter as inapplicable to issuance, sale, or exchange of certain classes of securities, see section 205 of Title 11, Bankruptcy.

§ 77b. Definitions

When used in this subchapter, unless the context otherwise requires—

(1) The term "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(2) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof. As used in this paragraph the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(3) The term "sale" or "sell" shall include every contract of sale or disposition of a security or interest in a security, for value. The term "offer to sell", "offer for sale", or "offer" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The terms defined in this paragraph and the term "offer to buy" as used in subsection (c) of section 77e of this title shall not include preliminary negotiations or agreements between an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer) and any underwriter or among underwriters who are or are to be in privity of contract with an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer). Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to an-

other security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security.

(4) The term "issuer" means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used; and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of public offering.

(5) The term "Commission" means the Securities and Exchange Commission.

(6) The term "Territory" means Puerto Rico, Canal Zone, the Virgin Islands, and the insular possessions of the United States.

(7) The term "interstate commerce" means trade or commerce in securities or any transportation or communication relating thereto among the several States or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia.

(8) The term "registration statement" means the statement provided for in section 77f of this title, and includes any amendment thereto and any report, document, or memorandum filed as part of such statement or incorporated therein by reference.

(9) The term "write" or "written" shall include printed, lithographed, or any means of graphic communication.

(10) The term "prospectus" means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security; except that (a) a communication sent or given after the effective date of the registration statement (other than a prospectus permitted under subsection (b) of section 77j of this title) shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of subsection (a) of section 77j of this title at the time of [1] such communication was sent or given to the person to whom the communication was made, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of section 77j of this title may be obtained and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed, and contain such other information as the Commission, by rules or regulations deemed necessary or appropriate in the public interest and for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

(11) The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(12) The term "dealer" means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(13) The term "insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner, or a similar official or agency, of a State or territory or the District of Columbia; or any receiver or similar official or any liquidating agent for such company, in his capacity as such.

(14) The term "separate account" means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, the District of Columbia, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

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[1] So in original.

(May 27, 1933, ch. 38, title I, § 2, 48 Stat. 74; June 6, 1934, ch. 404, title II, §§ 201, 210, 48 Stat. 905, 908; Aug. 10, 1954, ch. 667, title I, §§ 1–4, 68 Stat. 683; June 25, 1959, Pub. L. 86-70, § 12(a), 73 Stat. 143; July 12, 1960, Pub. L. 86-624, § 7(a), 74 Stat. 412; Dec. 14, 1970, Pub. L. 91-547, § 27(a), 84 Stat. 1433.)

CODIFICATION

Words "Philippine Islands" were deleted from the definition of term "Territory" under authority of Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352, which granted independence to the Philippine Islands. Proc. No. 2695 was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and is set out as a note under that section.

AMENDMENTS

1970—Pars. (13), (14). Pub. L. 91-547 added pars. (13) and (14).

1960—Pub. L. 86-624 eliminated Hawaii from par. (6).

1959—Pub. L. 86-70 eliminated Alaska from par. (6).

1954—Act Aug. 10, 1954, in pars. (3), (8), (10), and (11), redefined the term "sale" so as to distinguish between "offers" and "sales", clarified the definition of "registration statement", and conformed the definition of "prospectus" to changes made by act Aug. 10, 1954, to sections 77e and 77j of this title.

1934—Act June 6, 1934, § 201, amended pars. (1), (4), and (10).

EFFECTIVE DATE OF 1970 AMENDMENT

Pars. (13) and (14) of this section effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 501 of act Aug. 10, 1954, provided that: "This Act [amending this section, sections 77c to 77e, 77j, 77l, 77q, 77v, 77ccc to 77fff, 77xxx, 78k, 78l, 80a-2 and 80a-24 of this title] shall take effect sixty days after the date of its enactment [Aug. 10, 1954]."

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Act June 6, 1934, § 210, transferred to the Securities and Exchange Commission the powers, duties, and functions of the Federal Trade Commission under this subchapter by substituting the Securities and Exchange Commission for the Federal Trade Commission in the definition of "Commission" in par. (5).

CROSS REFERENCES

Corporate reorganizations, arrangements and real property arrangements, application of the terms security, issuer, underwriter, and dealer as defined in this section to, see sections 664, 793, and 918 of Title 11, Bankruptcy.

Definition of terms—

- Sale and sell, prospectus, and underwriter under the Trust Indenture Act of 1939, see section 77ccc of this title.
- Security, person, and sale or sell under the Public Utility Holding Company Act of 1935, see section 79b of this title.
- Security, person, sale and sell, issuer, prospectus, underwriter, and dealer under the Investment Company Act of 1940, see section 80a-2 of this title.
- Security, person, underwriter, and dealer under the Investment Advisers Act of 1940, see section 80b-2 of this title.

Investment securities defined for national banking associations, see section 24 of Title 12, Banks and Banking.

Trust Indenture Act of 1939, application to, see section 77ccc of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77ccc, 77ddd of this title; title 11 sections 664, 793, 918; title 12 section 1451; title 29 section 1002.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 1-1182 of the District of Columbia Code.

§ 77c. Classes of securities under this subchapter

(a) Exempted securities

Except as hereinafter expressly provided, the provisions of this subchapter shall not apply to any of the following classes of securities:

(1) Any security which, prior to or within sixty days after May 27, 1933, has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offering of any such security by an issuer or underwriter subsequent to such sixty days;

(2) Any security issued or guaranteed by the United States or any territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or territory, or by any public instrumentality of one or more States or territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian; or any security which is an industrial development bond (as defined in section 103(c)(2) of title 26) the interest on which is excludable from gross income under section 103(a)(1) of title 26 if, by reason of the application of paragraph (4) or (6) of section 103(c) of title 26 (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security; or any interest or participation in a single or collective trust fund maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26, or (B) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of title 26, other than any plan described in clause (A) or (B) of this paragraph (i) the contributions under which are held in a single trust fund maintained by a bank or in a separate account maintained by

an insurance company for a single employer and under which an amount in excess of the employer's contribution is allocated to the purchase of securities (other than interests or participations in the trust or separate account itself) issued by the employer or by any company directly or indirectly controlling, controlled by or under common control with the employer or (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26. The Commission, by rules and regulations or order, shall exempt from the provisions of section 77e of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter. For purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term "bank" means any national bank, or any banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.];

(3) Any note, draft, bill of exchange, or banker's acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(4) Any security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or individual;

(5) Any security issued (A) by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution, except that the foregoing exemption shall not apply with respect to any such security where the issuer takes from the total amount paid or deposited by the purchaser, by way of any fee, cash value or other device whatsoever, either upon termination of the investment at maturity or before maturity, an aggregate amount in excess of 3 per centum of the face value of such security; or (B) by (i) a farmer's cooperative organization exempt from tax under section 521 of title 26, (ii) a corporation described in section 501(c)(16) of title 26 and exempt from tax under section 501(a) of title 26, or (iii) a corporation described in section 501(c)(2) of title 26 which is exempt from tax under section 501(a) of title 26 and is organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization or corporation described in clause (i) or (ii);

(6) Any security issued by a motor carrier the issuance of which is subject to the provisions of section 314 of title 49, or any interest in a railroad equipment trust. For purposes of this paragraph "interest in a railroad equipment trust" means any interest in an equipment trust, lease, conditional sales contract, or other similar arrangement entered into, issued, assumed, guaranteed by, or for the benefit of, a common carrier to finance the acquisition of rolling stock, including motive power;

(7) Certificates issued by a receiver or by a trustee in bankruptcy, with the approval of the court;

(8) Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia;

(9) Any security exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange;

(10) Any security which is issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear, by any court, or by any official or agency of the United States, or by any State or Territorial banking or insurance commission or other governmental authority expressly authorized by law to grant such approval;

(11) Any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within or, if a corporation, incorporated by and doing business within, such State or Territory.

(b) Additional exemptions

The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed therein, add any class of securities to the securities exempted as provided in this section, if it finds that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering; but no issue of securities shall be exempted under this subsection where the aggregate amount at which such issue is offered to the public exceeds $500,000.

(c) Securities issued by small investment company

The Commission may from time to time by its rules and regulations and subject to such terms and conditions as may be prescribed therein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] if it finds, having regard to the purposes of that Act, that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors.

(May 27, 1933, ch. 38, title I, §3, 48 Stat. 75; June 6, 1934, ch. 404, title II, §202, 48 Stat. 906; Feb. 4, 1887, ch. 104, title II, §214, as added Aug. 9, 1935, ch. 498, 49 Stat. 557, and amended June 29, 1938, ch. 811, §15, 52 Stat. 1240; May 15, 1945, ch. 122, 59 Stat. 167; Aug. 10, 1954, ch. 667, title I, §5, 68 Stat. 684; Aug. 21, 1958, Pub. L. 85-699, title III, §307(a), 72 Stat. 694; Aug. 10, 1970, Pub. L. 91-373, title IV, §401(a), 84 Stat. 718; Dec. 14, 1970, Pub. L. 91-547, §27(b), (c), 84 Stat. 1434; Dec. 19, 1970, Pub. L. 91-565, 84 Stat. 1480; Dec. 22, 1970, Pub. L. 91-567, §6(a), 84 Stat. 1498; Feb. 5, 1976, Pub. L. 94-210, title III, §308(a)(1), (3), 90 Stat. 56, 57.)

References in Text

The Investment Company Act of 1940, referred to in subsec. (a)(2), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables volume.

The Small Business Investment Act of 1958, referred to in subsec. (c), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, which is classified generally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables volume.

Codification

Subsec. (a)(6) is comprised of part of section 214 of act Feb. 4, 1887, as added Aug. 9, 1935, and amended June 29, 1938. The remainder of section 214 is classified to section 314 of Title 49, Transportation.

Amendments

1976—Subsec. (a)(6). Pub. L. 94-210 substituted provisions relating to any security issued by a motor carrier, subject to the provisions of section 314 of title 49, or any interest in a railroad equipment trust, and provisions defining "interest in a railroad equipment trust", for provisions relating to any security issued by a common or contract carrier, subject to the provisions of section 20a of title 49.

1970—Subsec. (a)(2). Pub. L. 91-567 exempted any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian, any security which is an industrial development bond the interest on which is excludable from gross income under section 103(a)(1) of title 26, any interest or participation in a single or collective trust fund maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26, or an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of title 26, directed the Commission to exempt from the provisions of section 77e of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26 if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors, and provided that for the purposes of this paragraph a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank, and that in the case of a common trust fund or similar fund, or a collective trust fund, the term "bank" has the same meaning as in the Investment Company Act of 1940.

Pub. L. 91-547, §27(b), deleted following security of a Federal Reserve Bank reference to industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of title 26; and exempted from registration provisions interests or participations in common trust funds maintained by a bank for collective investment of assets held by it in a fiduciary capacity interests or participations in bank collective trust funds maintained for funding of employees' stock bonus, pension, or profit-sharing plans; interests or participations in separate accounts maintained by insurance companies for funding certain stock-bonus, pension, or profit-sharing plans which meet the requirements for qualification under section 401 of title 26; and interests or participations issued by bank collective trust funds or insurance company separate accounts for funding certain stock-bonus, pension, profit-sharing, or annuity plans when the Commission by rule, regulation, or order determines this to be necessary in the public interest; provided that a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; substituted where first appearing "security issued or guaranteed by any bank" for "security issued or guaranteed by any national bank, or by any banking institution organized under the laws of any State or Territory or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or Territorial banking commission or similar official", the latter provision now incorporated in a separate definition of term "bank"; and made the Investment Company Act definition of bank applicable as in the case of a common trust fund or similar fund, or a collective trust fund.

Pub. L. 91-373 added reference to industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of title 26.

Subsec. (a)(5). Pub. L. 91-547, §27(c), designated existing provisions as cl. (A), included cooperative bank issues, required the issuer to be an institution which is supervised and examined by State or Federal authority having supervision over such institution, deleted provision following "similar institution" reading "substantially all the business of which is confined to the making of loans to members" and substituted provisions designated as cl. (B) for prior provision relating to a security issued by a farmers' cooperative association as defined in paragraphs (12), (13), and (14) of section 103 of the Revenue Act of 1932".

Subsec. (b). Pub. L. 91-565 substituted "$500,000" for "$300,000".

1958—Subsec. (c). Pub. L. 85-699 added subsec. (c).

1954—Subsec. (a)(11). Act Aug. 10, 1954, inserted "offered and" before "sold".

1945—Subsec. (b). Act May 15, 1945, substituted "$300,000" for "$100,000".

1938—Act June 29, 1938, reenacted subsec. (a)(6) without change.

1935—Act Feb. 4, 1887, as added by act Aug. 9, 1935, included a security issued by a contract carrier in subsec. (a)(6).

1934—Act June 6, 1934, amended subsec. (a)(2), (4), and (8) and added pars. (9), (10), and (11).

Effective Date of 1976 Amendment

Section 308(d)(1) of Pub. L. 94-210 provided that: "The amendments made by subsection (a) of this section [amending subsec. (a)(6) of this section and section 77s of this title and section 314 of title 49] shall take effect on the 60th day after the date of enactment of this Act [Feb. 5, 1976], but shall not apply to any bona fide offering of a security made by the issuer, or by or through an underwriter, before such 60th day."

Effective Date of 1970 Amendments

Section 6(d) of Pub. L. 91-567 provided that: "The amendments made by this section [to subsec. (a)(2) of this section and sections 77ddd(a)(4) and 78c(a)(12) of this title] shall apply with respect to securities sold after January 1, 1970."

Amendment of subsec. (a)(2) and (5) of this section and enactment of note provisions hereunder by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

Section 401(c) of Pub. L. 91-373 provided that: "The amendments made by this section [amending this section and section 78c(a)(12) of this title] shall apply with respect to securities sold after January 1, 1970."

Effective Date of 1954 Amendment

Amendment effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Securities and Investment Company Provisions Inapplicable to Certain Life Insurance Benefits Issued Prior to March 23, 1959

Section 29 of Pub. L. 91-547 provided that: "The provisions of the Securities Act of 1933 [this subchapter] and the Investment Company Act of 1940 [section 80a-1 et seq. of this title] shall not apply, except for purposes of definition of terms used in this section, to any interest or participation (including any separate account or other fund providing for the sharing of income or gains and losses, and any interest or participation in such account or fund) in any contract, certificate, or policy providing for life insurance benefits which was issued prior to March 23, 1959, by an insurance company, if (1) the form of such contract, certificate, or policy was approved by the insurance commissioner, or similar official or agency, of a State, territory or the District of Columbia, and (2) under such contract, certificate, or policy not to exceed 49 per centum of the gross premiums or other consideration paid was to be allocated to a separate account or other fund providing for the sharing of income or gains and losses. Nothing herein contained shall be taken to imply that any such interest or participation constitutes a 'security' under any other laws of the United States."

Cross References

Certificates of deposit issued in proceedings for modification of railroad financial structures, exemption, see section 20b of Title 49, Transportation.

Civil liabilities arising in connection with prospectuses and oral communications notwithstanding this section, see section 77*l* of this title.

Fraudulent interstate transactions, section as inapplicable to, see section 77q of this title.

Inter-American Development Bank securities, exemption, see section 283h of Title 22, Foreign Relations and Intercourse.

International Bank for Reconstruction and Development securities, exemption, see sections 286k-1 and 286k-2 of Title 22.

Investment company securities not exempt, see section 80a-24 of this title.

Reorganization of railroads engaged in interstate commerce, certain classes of securities as within this section, see section 205 of Title 11, Bankruptcy.

Rules and regulations, authority of Commission to make, amend, and rescind, see section 77s of this title.

Trust Indenture Act of 1939, application of subsec. (a) of this section to, see section 77ddd of this title.

Section Referred to in Other Sections

This section is referred to in sections 77*l*, 77q, 77ddd, 80a-24 of this title; title 11 section 205; title 12 sections 1425b, 2290; title 22 sections 283h, 285h, 286k-1; title 25 section 646; title 49 section 20b.

§ 77d. Exempted transactions

The provisions of section 77e of this title shall not apply to—

(1) transactions by any person other than an issuer, underwriter, or dealer.

(2) transactions by an issuer not involving any public offering.

(3) transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except—

(A) transactions taking place prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter,

(B) transactions in a security as to which a registration statement has been filed taking place prior to the expiration of forty days after the effective date of such registration statement or prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date, whichever is later (excluding in the computation of such forty days any time during which a stop order issued under section 77h of this title is in effect as to the security), or such shorter period as the Commission may specify by rules and regulations or order, and

(C) transactions as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

With respect to transactions referred to in clause (B), if securities of the issuer have not previously been sold pursuant to an earlier effective registration statement the applicable period, instead of forty days, shall be ninety days, or such shorter period as the Commission may specify by rules and regulations or order.

(4) brokers' transactions executed upon customers' orders on any exchange or in the over-the-counter market but not the solicitation of such orders.

(5)(A) Transactions involving offers or sales of one or more promissory notes directly secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial structure, and participation interests in such notes—

(i) where such securities are originated by a savings and loan association, savings bank, commercial bank, or similar banking institution which is supervised and examined by a Federal or State authority, and are offered and sold subject to the following conditions:

(a) the minimum aggregate sales price per purchaser shall not be less than $250,000;

(b) the purchaser shall pay cash either at the time of the sale or within sixty days thereof; and

(c) each purchaser shall buy for his own account only; or

(ii) where such securities are originated by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to sections 1709 and 1715b of title 12 and are offered or sold subject to the three conditions specified in subparagraph (A)(i) to any institution described in such subparagraph or to any insurance company subject to the supervision of the insurance commissioner, or any agency or officer performing like function, of any State or territory of the United States or the District of Columbia, or the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association.

(B) Transactions between any of the entities described in subparagraph (A)(i) or (A)(ii) involving non-assignable contracts to buy or sell the foregoing securities which are to be completed within two years, where the seller of the foregoing securities pursuant to any such contract is one of the parties described in subparagraph (A)(i) or (A)(ii) who may originate such securities and the purchaser of such securities pursuant to any such contract is any institution described in subparagraph (A)(i) or any insurance company described in subparagraph (A)(ii), the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or the Government National Mortgage Association and where the foregoing securities are subject to the three conditions for sale set forth in subparagraphs (A)(i)(a) through (c).

(C) The exemption provided by subparagraphs (A) and (B) shall not apply to resales of the securities acquired pursuant thereto, unless each of the conditions for sale contained in subparagraphs (A)(i)(a) through (c) are satisfied.

(May 27, 1933, ch. 38, title I, § 4, 48 Stat. 77; June 6, 1934, ch. 404, title II, § 203, 48 Stat. 906; Aug. 10, 1954, ch. 667, title I, § 6, 68 Stat. 684; Aug. 20, 1964, Pub. L. 88-467, § 12, 78 Stat. 580; June 4, 1975, Pub. L. 94-29, § 30, 89 Stat. 169.)

AMENDMENTS

1975—Par. (5). Pub. L. 94-29 added par. (5).

1964—Pub. L. 88-467 substituted in the introductory statement "shall not apply to—" for "shall not apply to any of the following transactions:".

Par. (1). Pub. L. 88-467 reenacted the existing first provision of par. (1) and eliminated the second and third provisions, which are now incorporated in pars. (2) and (3)(A) to (C).

Par. (2). Pub. L. 88-467 redesignated the second provision of former par. (1) as par. (2). Former par. (2) redesignated par. (4).

Par. (3). Pub. L. 88-467 redesignated the third provision of former par. (1) as par. (3), designated the excepted transactions as clauses (A) to (C), inserted in clause (B) the words "or such shorter period as the Commission may specify by rules and regulations or order" and added the sentence relating to the applicable period to transactions referred to in clause (B).

Par. (4). Pub. L. 88-467 redesignated former par. (2) as par. (4) and substituted "over-the-counter market" for "open or counter market".

1954—Act Aug. 10, 1954, reduced from 1 year to 40 days the period during which the delivery of a prospectus is required in trading transactions as distinguished from initial distribution of the new securities.

1934—Act June 6, 1934, among other changes, repealed a former par. (3), provisions of which are now covered by section 77c(9), (10) of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-467 effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Reorganization of railroads engaged in interstate commerce, transactions in certain classes of securities as within this section, see section 205 of Title 11, Bankruptcy.

Trust Indenture Act of 1939, application to transactions exempted by this section, see section 77ddd of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a-24 of this title; title 11 section 205.

§ 77e. Prohibitions relating to interstate commerce and the mails

(a) Sale or delivery after sale of unregistered securities

Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

(b) Necessity of prospectus meeting requirements of section 77j of this title

It shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security with respect to which a registration statement has been filed under this subchapter, unless such prospectus meets the requirements of section 77j of this title; or

(2) to carry or cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of section 77j of this title.

(c) Necessity of filing registration statement

It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 77h of this title.

(May 27, 1933, ch. 38, title I, § 5, 48 Stat. 77; June 6, 1934, ch. 404, title II, § 204, 48 Stat. 906; Aug. 10, 1954, ch. 667, title I, § 7, 68 Stat. 684.)

AMENDMENTS

1954—Subsec. (a)(1). Act Aug. 10, 1954, deleted the words "or offer to buy" following "to sell".

Subsec. (b). Act Aug. 10, 1954, in par. (1) substituted words "with respect to which a registration statement has been filed" for "registered" and in par. (2) omitted "to" following "to carry or" and added "subsection (a) of" preceding "section 77j of this title".

Subsec. (c). Act Aug. 10, 1954, added subsec. (c).

1934—Act June 6, 1934, repealed former subsec. (c), the provisions of which are now covered by section 77c(a)(11) of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

CROSS REFERENCES

Certificates of—
  - Deposit issued in proceedings for modification of railroad financial structures, exemption of, see section 20b of Title 49, Transportation.
  - Indebtedness issued by receiver, trustee, or debtor in possession pursuant to sections 516(2), 744 and 846 of Title 11, Bankruptcy, section as inapplicable to, see sections 664, 793, and 918 of Title 11.

Civil liabilities for selling securities in violation of this section, see section 77l of this title.

Intrastate issue of securities as exempt from this subchapter, see section 77c of this title.

Offer to buy, defined, see section 77b of this title.

Prospectus omitting or summarizing information, see section 77j of this title.

Taking effect of registration statements and amendments thereto, see section 77h of this title.

Transactions exempted from this section, see section 77d of this title.

Transactions in securities issued pursuant to a corporate reorganization, arrangement, or real property arrangement plan, section as partially inapplicable to, see sections 664, 793, and 918 of Title 11, Bankruptcy.

Trust Indenture Act of 1939, exempted securities and transactions, see section 77ddd of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77b to 77d, 77j, 77l, 77ddd, 80a-24 of this title; title 11 sections 664, 793, 918; title 49 section 20b.

§ 77f. Registration of securities

(a) Method of registration

Any security may be registered with the Commission under the terms and conditions hereinafter provided, by filing a registration statement in triplicate, at least one of which shall be signed by each issuer, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors or persons performing similar functions (or, if there is no board of directors or persons performing similar functions, by the majority of the persons or board having the power of management of the issuer), and in case the issuer is a foreign or Territorial person by its duly authorized representative in the United States; except that when such registration statement relates to a security issued by a foreign government, or political subdivision thereof, it need be signed only by the underwriter of such security. Signatures of all such persons when written on the said registration statements shall be presumed to have been so written by authority of the person whose signature is so affixed and the burden of proof, in the event such authority shall be denied, shall be upon the party denying the same. The affixing of any signature without the authority of the purported signer shall constitute a violation of this subchapter. A registration statement shall be deemed effective only as to the securities specified therein as proposed to be offered.

(b) Fee for registration

At the time of filing a registration statement the applicant shall pay to the Commission a fee of one-fiftieth of 1 per centum of the maximum aggregate price at which such securities are proposed to be offered, but in no case shall such fee be less than $100.

(c) Time registration effective

The filing with the Commission of a registration statement, or of an amendment to a registration statement, shall be deemed to have taken place upon the receipt thereof, but the filing of a registration statement shall not be deemed to have taken place unless it is accompanied by a United States postal money order or a certified bank check or cash for the amount of the fee required under subsection (b) of this section.

(d) Information available to public

The information contained in or filed with any registration statement shall be made available to the public under such regulations as the Commission may prescribe, and copies thereof, photostatic or otherwise, shall be furnished to every applicant at such reasonable charge as the Commission may prescribe.

(May 27, 1933, ch. 38, title I, § 6, 48 Stat. 78; Oct. 22, 1965, Pub. L. 89-289, § 1, 79 Stat. 1051.)

CODIFICATION

The original of this section contained a subsec. (e) which provided that no registration statement should be filed within the first forty days following May 27, 1933.

AMENDMENTS

1965—Subsec. (b). Pub. L. 89-289 substituted "one-fiftieth" for "one one-hundredth" and "$100" for "$25".

EFFECTIVE DATE OF 1965 AMENDMENT

Section 2 of Pub. L. 89-289 provided that: "The amendment made by the first section of this Act [to subsec. (b) of this section] shall take effect January 1, 1966."

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Registration of—
- Brokers and dealers in over-the-counter markets, see section 78o of this title.
- Holding companies; registration statement, contents, see section 79e of this title.
- Investment advisers, see section 80b-3 of this title.
- Investment companies, see section 80a-8 of this title.
- National securities exchanges, see section 78f of this title.

Registration requirements for securities under Securities Exchange Act of 1934, see section 78*l* of this title.

Registration statement, defined, see section 77b of this title.

Rules and regulations, authority of Commission to make, amend, and rescind, see section 77s of this title.

Schedule of information required in registration statement, see section 77aa of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77b, 80a-24 of this title.

§ 77g. Information required in registration statement

The registration statement, when relating to a security other than a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule A of section 77aa of this title, and when relating to a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule B of section 77aa of this title; except that the Commission may by rules or regulations provide that any such information or document need not be included in respect of any class of issuers or securities if it finds that the requirement of such information or document is inapplicable to such class and that disclosure fully adequate for the protection of investors is otherwise required to be included within the registration statement. If any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement. If any such person is named as having prepared or certified a report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement unless the Commission dispenses with such filing as impracticable or as involving undue hardship on the person filing the registration statement. Any such registration statement shall contain such other information, and be accompanied by such other documents, as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

(May 27, 1933, ch. 38, title I, § 7, 48 Stat. 78.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Declarations by registered companies to include information and documents under this section, see section 79g of this title.

Issue of securities by electric utility company engaged in interstate commerce, see section 824c of Title 16, Conservation.

Rules and regulations, authority of Commission to make, amend, and rescind, see section 77s of this title.

Trust Indenture Act of 1939, application to, see section 77eee of this title.

Undertaking to be contained in registration statement, see section 78o of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77eee, 79g of this title; title 16 section 824c.

§ 77h. Taking effect of registration statements and amendments thereto

(a) Effective date of registration statement

Except as hereinafter provided, the effective date of a registration statement shall be the twentieth day after the filing thereof or such earlier date as the Commission may determine, having due regard to the adequacy of the information respecting the issuer theretofore available to the public, to the facility with which the nature of the securities to be registered, their relationship to the capital structure of the issuer and the rights of holders thereof can be understood, and to the public interest and the protection of investors. If any amendment to any such statement is filed prior to the effective date of such statement, the registration statement shall be deemed to have been filed when such amendment was filed; except that an amendment filed with the consent of the Commission, prior to the effective date of the registration statement, or filed pursuant to an order of the Commission, shall be treated as a part of the registration statement.

(b) Incomplete or inaccurate registration statement

If it appears to the Commission that a registration statement is on its face incomplete or inaccurate in any material respect, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice not later than ten days after the filing of the registration statement, and opportunity for hearing (at a time fixed by the Commission) within ten days after such notice by personal service or the sending of such telegraphic notice, issue an order prior to the effective date of registration refusing to permit such statement to become effective until it has been amended in accordance with such order. When such statement has been amended in accordance with such order the Commission shall so declare and the registration shall become effective at the time provided in subsection (a) of this section or upon the date of such declaration, whichever date is the later.

(c) Effective date of amendment to registration statement

An amendment filed after the effective date of the registration statement, if such amendment, upon its face, appears to the Commission not to be incomplete or inaccurate in any material respect, shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(d) Untrue statements or omissions in registration statement

If it appears to the Commission at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice, and after opportunity for hearing (at a time fixed by the Commission) within fifteen days after such notice by personal service or the sending of such telegraphic notice, issue a stop order suspending the effectiveness of the registration statement. When such statement has been amended in accordance with such stop order, the Commission shall so declare and thereupon the stop order shall cease to be effective.

(e) Examination for issuance of stop order

The Commission is empowered to make an examination in any case in order to determine whether a stop order should issue under subsection (d) of this section. In making such examination the Commission or any officer or officers designated by it shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the issuer, underwriter, or any other person, in respect of any matter relevant to the examination, and may, in its discretion, require the production of a balance sheet exhibiting the assets and liabilities of the issuer, or its income statement, or both, to be certified to by a public or certified accountant approved by the Commission. If the issuer or underwriter shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order.

(f) Notice requirements

Any notice required under this section shall be sent to or served on the issuer, or, in case of a foreign government or political subdivision thereof, to or on the underwriter, or, in the case of a foreign or Territorial person, to or on its duly authorized representative in the United States named in the registration statement, properly directed in each case of telegraphic notice to the address given in such statement.

(May 27, 1933, ch. 38, title I, § 8, 48 Stat. 79; Aug. 22, 1940, ch. 686, title III, § 301, 54 Stat. 857.)

AMENDMENTS

1940—Subsec. (a). Act Aug. 22, 1940, amended generally subsec. (a).

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Exempted transactions, see section 77d of this title.

Prohibitions unless registration statement is in effect, see section 77e of this title.

Review by Commission of actions with respect to delegation of its functions, see section 78d-1 of the title.

Suspending effective date of, suspending for specified period, or withdrawing of registration of security for noncompliance with Securities Exchange Act of 1934, see section 78s of this title.

Trust Indenture Act of 1939—
  Qualification of indenture, application for, see section 77ggg of this title.
  Refusal orders, see section 77eee of this title.
  Stop orders, see section 77iii of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77d, 77e, 77eee, 77ggg, 77iii, 78d-1 of this title.

§ 77i. Court review of orders

(a) Any person aggrieved by an order of the Commission may obtain a review of such order in the Court of Appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or be set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission. The finding of the Commission as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) The commencement of proceedings under subsection (a) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(May 27, 1933, ch. 38, title I, § 9, 48 Stat. 80; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Aug. 28, 1958, Pub. L. 85-791, § 9, 72 Stat. 945.)

CODIFICATION

In subsec. (a), "section 1254 of title 28" was substituted for "sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347)" on authority of Act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-791, in second sentence, substituted "transmitted by the clerk of the court to" for "served upon", eliminated "certify and" preceding "file in the court", eliminated "a transcript of" following "file in the court", and inserted "as provided in section 2112 of title 28".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

Act June 7, 1934, substituted "United States Court of Appeals for the District of Columbia" for "Court of Appeals of the District of Columbia".

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Court review of orders under—

- Investment Advisers Act of 1940, see section 80b-13 of this title.
- Investment Company Act of 1940, see section 80a-42 of this title.
- Public Utility Holding Company Act of 1935, see section 79x of this title.
- Securities and Exchange Act of 1934, see section 78y of this title.
- Trust Indenture Act of 1939, see section 77vvv of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 77vvv of this title.

§ 77j. Information required in prospectus

(a) Information in registration statement; documents not required

Except to the extent otherwise permitted or required pursuant to this subsection or subsections (c), (d), or (e) of this section—

(1) a prospectus relating to a security other than a security issued by a foreign government or political subdivision thereof, shall contain the information contained in the registration statement, but it need not include the documents referred to in paragraphs (28) to (32), inclusive, of schedule A of section 77aa of this title;

(2) a prospectus relating to a security issued by a foreign government or political subdivision thereof shall contain the information contained in the registration statement, but it need not include the documents referred to in paragraphs (13) and (14) of schedule B of section 77aa of this title;

(3) notwithstanding the provisions of paragraphs (1) and (2) of this subsection when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use, so far as such information is known to the user of such prospectus or can be furnished by such user without unreasonable effort or expense;

(4) there may be omitted from any prospectus any of the information required under this subsection which the Commission may by rules or regulations designate as not being necessary or appropriate in the public interest or for the protection of investors.

(b) Summarizations and omissions allowed by rules and regulations

In addition to the prospectus permitted or required in subsection (a) of this section, the Commission shall by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors permit the use of a prospectus for the purposes of subsection (b)(1) of section 77e of this title which omits in part or summarizes information in the prospectus specified in subsection (a) of this section. A prospectus permitted under this subsection shall, except to the extent the Commission by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors otherwise provides, be filed as part of the registration statement but shall not be deemed a part of such registration statement for the purposes of section 77k of this title. The Commission may at any time issue an order preventing or suspending the use of a prospectus permitted under this subsection, if it has reason to believe that such prospectus has not been filed (if required to be filed as part of the registration statement) or includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which such prospectus is or is to be used, not misleading. Upon issuance of an order under this subsection, the Commission shall give notice of the issuance of such order and opportunity for hearing by personal service or the sending of confirmed telegraphic notice. The Commission shall vacate or modify the order at any time for good cause or if such prospectus has been filed or amended in accordance with such order.

(c) Additional information required by rules and regulations

Any prospectus shall contain such other information as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

(d) Classification of prospectuses

In the exercise of its powers under subsections (a), (b), or (c) of this section, the Commission shall have authority to classify prospectuses according to the nature and circumstances of their use or the nature of the security, issue, issuer, or otherwise, and, by rules and regulations and subject to such terms and conditions as it shall specify therein, to prescribe as to each class the form and contents which it may find appropriate and consistent with the public interest and the protection of investors.

(e) Information in conspicuous part of prospectus

The statements or information required to be included in a prospectus by or under authority of subsections (a), (b), (c), or (d) of this section, when written, shall be placed in a conspicuous part of the prospectus and, except as otherwise permitted by rules or regulations, in type as large as that used generally in the body of the prospectus.

(f) Prospectus consisting of radio or television broadcast

In any case where a prospectus consists of a radio or television broadcast, copies thereof shall be filed with the Commission under such rules and regulations as it shall prescribe. The Commission may by rules and regulations require the filing with it of forms and prospectuses used in connection with the offer or sale of securities registered under this subchapter.

(May 27, 1933, ch. 38, title I, § 10, 48 Stat. 81; June 6, 1934, ch. 404, title II, § 205, 48 Stat. 906; Aug. 10, 1954, ch. 667, title I, § 8, 68 Stat. 685.)

Amendments

1954—Act Aug. 10, 1954, complemented changes in section 77e of this title by act Aug. 10, 1954, permitted offering activities in the waiting period and in so doing rearranged the sequence of the subsections, added the new material contained in subsec. (b) and renumbered subsecs. (c) and (d) as (e) and (f), respectively.

1934—Subsec. (b)(1). Act June 6, 1934, amended subsec. (b)(1).

Effective Date of 1954 Amendment

Amendment effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Definition of prospectus—
  Investment Company Act of 1940, see section 80a-2 of this title.
  Prospectus within this subchapter, see section 77b of this title.
  Trust Indenture Act of 1939, see section 77ccc of this title.

Prohibitions unless prospectus meets requirements of this section, see section 77e of this title.

Regulations for form of information in prospectus, see section 80a-24 of this title.

Rules and regulations, authority of Commission to make, amend, and rescind, see section 77s of this title.

Trust Indenture Act of 1939—
  Prospectus under, see section 77eee of this title.
  Transportation of prospectus concerning securities not registered under this subchapter in interstate commerce or mails as unlawful, see section 77fff of this title.

Section Referred to in Other Sections

This section is referred to in sections 77b, 77e, 77eee, 80a-2, 80a-24 of this title.

§ 77k. Civil liabilities on account of false registration statement

(a) Persons possessing cause of action; persons liable

In case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security (unless it is proved that at the time of such acquisition he knew of such untruth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue—

(1) every person who signed the registration statement;

(2) every person who was a director of (or person performing similar functions) or partner in the issuer at the time of the filing of the part of the registration statement with respect to which his liability is asserted;

(3) every person who, with his consent, is named in the registration statement as being or about to become a director, person performing similar functions, or partner;

(4) every accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, who has with his consent been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement in such registration statement, report, or valuation, which purports to have been prepared or certified by him;

(5) every underwriter with respect to such security.

If such person acquired the security after the issuer has made generally available to its security holders an earning statement covering a period of at least twelve months beginning after the effective date of the registration statement, then the right of recovery under this subsection shall be conditioned on proof that such person acquired the security relying upon such untrue statement in the registration statement or relying upon the registration statement and not knowing of such omission, but such reliance may be established without proof of the reading of the registration statement by such person.

(b) Persons exempt from liability upon proof of issues

Notwithstanding the provisions of subsection (a) of this section no person, other than the issuer, shall be liable as provided therein who shall sustain the burden of proof—

(1) that before the effective date of the part of the registration statement with respect to which his liability is asserted (A) he had resigned from or had taken such steps as are permitted by law to resign from, or ceased or refused to act in, every office, capacity, or relationship in which he was described in the registration statement as acting or agreeing to act, and (B) he had advised the Commission and the issuer in writing that he had taken such action and that he would not be responsible for such part of the registration statement; or

(2) that if such part of the registration statement became effective without his knowledge, upon becoming aware of such fact he forthwith acted and advised the Commission, in accordance with paragraph (1) of this subsection, and, in addition, gave reasonable public notice that such part of the registration statement had become effective without his knowledge; or

(3) that (A) as regards any part of the registration statement not purporting to be made on the authority of an expert, and not purporting to be a copy of or extract from a report or valuation of an expert, and not purporting to be made on the authority of a public official document or statement, he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and (B) as regards any part of the registration statement purporting to be made upon his authority as an expert or purporting to be a copy of or extract from a report or valuation of himself as an expert, (i) he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) such part of the registration statement did not fairly represent his statement as an expert or was not a fair copy of or extract from his report or valuation as an expert; and (C) as regards any part of the registration statement purporting to be made on the authority of an expert (other than himself) or purporting to be a copy of or extract from a report or valuation of an expert (other than himself), he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement of the expert or was not a fair copy of or extract from the report or valuation of the expert; and (D) as regards any part of the registration statement purporting to be a statement made by an official person or purporting to be a copy of or extract from a public official document, he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue, or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement made by the official person or was not a fair copy of or extract from the public official document.

(c) Standard of reasonableness

In determining, for the purpose of paragraph (3) of subsection (b) of this section, what constitutes reasonable investigation and reasonable ground for belief, the standard of reasonableness shall be that required of a prudent man in the management of his own property.

(d) Effective date of registration statement with regard to underwriters

If any person becomes an underwriter with respect to the security after the part of the registration statement with respect to which his liability is asserted has become effective, then for the purposes of paragraph (3) of subsection (b) of this section such part of the registration statement shall be considered as having become effective with respect to such person as of the time when he became an underwriter.

(e) Measure of damages; undertaking for payment of costs

The suit authorized under subsection (a) of this section may be to recover such damages as shall represent the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and (1) the value thereof as of the time such suit was brought, or (2) the price at which such security shall have been disposed of in the market before suit, or (3) the price at which such security shall have been disposed of after suit but before judgment if such damages shall be less than the damages representing the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and the value thereof as of the time such suit was brought: *Provided*, That if the defendant proves that any portion or all of such damages represents other than the depreciation in value of such security resulting from such part of the registration statement, with respect to which his liability is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statements therein not misleading, such portion of or all such damages shall not be recoverable. In no event shall any underwriter (unless such underwriter shall have knowingly received from the issuer for acting as an underwriter some benefit, directly or indirectly, in which all other underwriters similarly situated did not share in proportion to their respective interests in the underwriting) be liable in any suit or as a consequence of suits authorized under subsection (a) of this section for damages in excess of the total price at which the securities underwritten by him and distributed to the public were offered to the public. In any suit under this or any other section of this subchapter the court may, in its discretion, require an undertaking for the payment of the costs of such suit, including reasonable attorney's fees, and if judgment shall be rendered against a party litigant, upon the motion of the other party litigant, such costs may be assessed in favor of such party litigant (whether or not such undertaking has been required) if the court believes the suit or the defense to have been without merit, in an amount sufficient to reimburse him for the reasonable expenses incurred by him, in connection with such suit, such costs to be taxed in the manner usually provided for taxing of costs in the court in which the suit was heard.

(f) Joint and several liability

All or any one or more of the persons specified in subsection (a) of this section shall be jointly and severally liable, and every person who becomes liable to make any payment under this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment, unless the person who has become liable was, and the other was not, guilty of fraudulent misrepresentation.

(g) Offering price to public as maximum amount recoverable

In no case shall the amount recoverable under this section exceed the price at which the security was offered to the public.

(May 27, 1933, ch. 38, title I, § 11, 48 Stat. 82; June 6, 1934, ch. 404, title II, § 206, 48 Stat. 907.)

AMENDMENTS

1934—Subsec. (a). Act June 6, 1934, added last paragraph.

Subsecs. (b)(3), (c) to (e). Act June 6, 1934, amended subsecs. (b)(3), (c) to (e).

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Effective date of amendment to registration statement, see section 80a-24 of this title.

Fraudulent interstate transactions, see section 77q of this title.

Information and documents to determine eligibility of indenture trustee and analysis of indenture, section as inapplicable to, see section 77eee of this title.

Liability for misleading statements under—

- Public Utility Holding Company Act of 1935, see section 79p of this title.
- Securities Exchange Act of 1934, see section 78r of this title.

Liability of controlling persons under this section, see section 77o of this title.

Limitation of actions, see section 77m of this title.

Material misstatements and unlawful representations under the Investment Advisers Act of 1940, see sections 80b-7 and 80b-8 of this title.

Prospectus not part of registration statement, see section 77j of this title.

Taxation of costs, see section 1920 of Title 28, Judiciary and Judicial Procedure.

Undertaking, for costs and reasonable attorneys' fees under—

- Securities Exchange Act of 1934, see sections 78i and 78r of this title.
- Trust Indenture Act of 1939, see sections 77ooo and 77www of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Costs, see rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

Effect of rule 54 on this section, see note by Advisory Committee under rule 54.

One form of action, see rule 2.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77j, 77m, 77o, 77eee, 80a-24 of this title.

§ 77*l*. Civil liabilities arising in connection with prospectuses and communications

Any person who—

(1) offers or sells a security in violation of section 77e of this title, or

(2) offers or sells a security (whether or not exempted by the provisions of section 77c of this title, other than paragraph (2) of subsection (a) of said section), by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission,

shall be liable to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

(May 27, 1933, ch. 38, title I, § 12, 48 Stat. 84; Aug. 10, 1954, ch. 667, title I, § 9, 68 Stat. 686.)

AMENDMENTS

1954—Act Aug. 10, 1954, inserted in pars. (1) and (2) "offers or" before "sells".

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

CROSS REFERENCES

Information and documents to determine eligibility of indenture trustee and analysis of indenture, section as inapplicable to, see section 77eee of this title.

Liability of controlling persons under this section, see section 77o of this title.

Limitation of actions, see section 77m of this title.

FEDERAL RULES OF CIVIL PROCEDURE

One form of action, see rule 2, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77m, 77*o*, 77eee of this title.

§ 77m. Limitation of actions

No action shall be maintained to enforce any liability created under section 77k or 77*l*(2) of this title unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under section 77*l*(1) of this title, unless brought within one year after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under section 77k or 77*l*(1) of this title more than three years after the security was bona fide offered to the public, or under section 77*l*(2) of this title more than three years after the sale.

(May 27, 1933, ch. 38, title I, § 13, 48 Stat. 84; June 6, 1934, ch. 404, title II, § 207, 48 Stat. 908.)

AMENDMENTS

1934—Act June 6, 1934, substituted "one year" for "two years", "three years" for "ten years", and added "or under section 77*l*(2) of this title more than three years after the sale".

CROSS REFERENCES

Damages from manipulation of security prices, see section 78i of this title.

Liability for misleading statements under—

Public Utility Holding Company Act of 1935, see section 79p of this title.

Securities Exchange Act of 1934, see section 78r of this title.

Trust Indenture Act of 1939, see section 77www of this title.

Offer of securities deemed as of effective date of latest amendment to registration statement, see section 80a-24 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

General rules of pleading, affirmative defenses, see rule 8, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a-24 of this title.

§ 77n. Contrary stipulations void

Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this subchapter or of the rules and regulations of the Commission shall be void.

(May 27, 1933, ch. 38, title I, § 14, 48 Stat. 84.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Contrary stipulations void under—

Investment Advisers Act of 1940, see section 80b-15 of this title.

Investment Company Act of 1940, see section 80a-46 of this title.

Public Utility Holding Company Act of 1935, see section 79z of this title.

Securities Exchange Act of 1934, see section 78cc of this title.

Trust Indenture Act of 1939, see section 77aaaa of this title.

Rules and regulations, authority of Commission to make, amend, and rescind, see section 77s of this title.

§ 77*o*. Liability of controlling persons

Every person who, by or through stock ownership, agency, or otherwise, or who, pursuant to or in connection with an agreement or understanding with one or more other persons by or through stock ownership, agency, or otherwise, controls any person liable under sections 77k or 77*l* of this title, shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person had no knowledge of or reasonable ground to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist.

(May 27, 1933, ch. 38, title I, § 15, 48 Stat. 84; June 6, 1934, ch. 404, title II, § 208, 48 Stat. 908.)

AMENDMENTS

1934—Act June 6, 1934, exempted from liability controlling persons having no knowledge or reasonable grounds for belief.

CROSS REFERENCES

Definition of term person, see section 77b of this title.

Liability of controlling persons under—

Public Utility Holding Company Act of 1935, see section 79z-1 of this title.

Securities Exchange Act of 1934, see section 78t of this title.

§ 77p. Additional remedies

The rights and remedies provided by this subchapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

(May 27, 1933, ch. 38, title I, § 16, 48 Stat. 84.)

CROSS REFERENCES

Securities Exchange Act of 1934 as providing additional remedies, see section 78bb of this title.

§ 77q. Fraudulent interstate transactions

(a) Use of interstate commerce for purpose of fraud or deceit

It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would

operate as a fraud or deceit upon the purchaser.

(b) Use of interstate commerce for purpose of offering for sale

It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

(c) Exemptions of section 77c not applicable to this section

The exemptions provided in section 77c of this title shall not apply to the provisions of this section.

(May 27, 1933, ch. 38, title I, § 17, 48 Stat. 84; Aug. 10, 1954, ch. 667, title I, § 10, 68 Stat. 686.)

AMENDMENTS

1954—Subsec. (a). Act Aug. 10, 1954, inserted in the introductory paragraph "offer or" before "sale".

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

CROSS REFERENCES

Fraud and false statements, see section 1001 et seq. of Title 18, Crimes and Criminal Procedure.

Information and documents to determine eligibility of indenture trustee and analysis of indenture, section as inapplicable to, see section 77eee of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 77eee of this title; title 7 section 1932.

§ 77r. State control of securities

Nothing in this subchapter shall affect the jurisdiction of the securities commission (or any agency or office performing like functions) of any State or Territory of the United States, or the District of Columbia, over any security or any person.

(May 27, 1933, ch. 38, title I, § 18, 48 Stat. 85.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Jurisdiction of other tribunals unaffected insofar as not in conflict with—

- Investment Company Act of 1940, see section 80a-49 of this title.
- Public Utility Holding Company Act of 1935, see section 79u of this title.
- Securities Exchange Act of 1934, see section 78bb of this title.
- Trust Indenture Act of 1939, see section 77zzz of this title.

§ 77s. Special powers of Commission

(a) The Commission shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this subchapter, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical, and trade terms used in this subchapter. Among other things, the Commission shall have authority, for the purposes of this subchapter, to prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. The rules and regulations of the Commission shall be effective upon publication in the manner which the Commission shall prescribe. No provision of this subchapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Commission, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(b) For the purpose of all investigations which, in the opinion of the Commission, are necessary and proper for the enforcement of this subchapter, any member of the Commission or any officer or officers designated by it are empowered to administer oaths and affirmations, subpena witnesses, take evidence, and require the production of any books, papers, or other documents which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States or any Territory at any designated place of hearing.

(May 27, 1933, ch. 38, title I, § 19, 48 Stat. 85; June 6, 1934, ch. 404, title II, § 209, 48 Stat. 908; Feb. 5, 1976, Pub. L. 94-210, title III, § 308(a)(2), 90 Stat. 57.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-210 struck out provisions relating to rules and regulations applicable to any common carrier subject to the provisions of section 20 of title 49.

1934—Subsec. (a). Act June 6, 1934, inserted "technical" in first sentence and added last sentence.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-210 effective on the 60th day after Feb. 5, 1976, but not applicable to any bona fide offering of a security made by the issuer, or by or through an underwriter, before such 60th day, see section 308(d)(1) of Pub. L. 94-210, set out as a note under section 77c of this title.

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Administration of oaths, etc., under—

- Investment Advisers Act of 1940, see section 80b-9 of this title.
- Investment Company Act of 1940, see section 80a-41 of this title.
- Public Utility Holding Company Act of 1935, see section 79r of this title.
- Securities Exchange Act of 1934, see section 78u of this title.
- Trust Indenture Act of 1939, see section 77uuu of this title.

Attendance of witnesses, and production of documents, judicial enforcement of orders for, see section 77v of this title.

Authority of Commission comparable to subsec. (a) of this section under—

- Investment Advisers Act of 1940, see section 80b-11 of this title.
- Investment Company Act of 1940, see sections 80a-29 and 80a-37 of this title.
- Public Utility Holding Company Act of 1935, see section 79t of this title.
- Securities Exchange Act of 1934, see section 78c and 78m of this title.
- Trust Indenture Act of 1939, see section 77sss of this title.

Rules and regulations—

- Action to enjoin acts or practices, constituting violation of, see section 77t of this title.
- Availability of information contained in or filed with any registration statement, see section 77f of this title.
- Classes of securities exempt from this subchapter by reason of small amount involved or limited character of public offering, see section 77c of this title.
- Information required in prospectus, see section 77j of this title.
- Information required in registration statement, see section 77g of this title.
- Integration of procedure with other Acts, see section 77hhh of this title.
- Investigation to determine violation of, see section 77t of this title.
- Jurisdiction of offenses and violations under, see section 77v of this title.
- Penalty for violation of, see section 77x of this title.

§ 77t. Injunctions and prosecution of offenses

(a) Investigation of violations

Whenever it shall appear to the Commission, either upon complaint or otherwise, that the provisions of this subchapter, or of any rule or regulation prescribed under authority thereof, have been or are about to be violated, it may, in its discretion, either require or permit such person to file with it a statement in writing, under oath, or otherwise, as to all the facts and circumstances concerning the subject matter which it believes to be in the public interest to investigate, and may investigate such facts.

(b) Action for injunction or criminal prosecution in district court

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this subchapter, or of any rule or regulation prescribed under authority thereof, it may in its discretion, bring an action in any district court of the United States or United States court of any Territory, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the necessary criminal proceedings under this subchapter. Any such criminal proceeding may be brought either in the district wherein the transmittal of the prospectus or security complained of begins, or in the district wherein such prospectus or security is received.

(c) Writ of mandamus

Upon application of the Commission the district courts of the United States and the United States courts of any Territory, shall also have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this subchapter or any order of the Commission made in pursuance thereof.

(May 27, 1933, ch. 38, title I, § 20, 48 Stat. 86; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

Codification

As originally enacted subsecs. (b) and (c) contained references to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted "the district court of the United States for the District of Columbia" for "the Supreme Court of the District of Columbia", and act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia". However, the words "United States District Court for the District of Columbia" have now been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of Title 28 which states that "the District of Columbia constitutes one judicial district".

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Actions to enjoin violations, institution of criminal proceedings, and investigation of facts by Commission under—

- Investment Advisers Act of 1940, see section 80b-9 of this title.
- Investment Company Act of 1940, see section 80a-41 of this title.
- Public Utility Holding Company Act of 1935, see section 79r of this title.
- Securities Exchange Act of 1934, see section 78u of this title.

Investigations and hearings under Trust Indenture Act of 1939, see section 77uuu of this title.

Issuance of mandamus under—

- Public Utility Holding Company Act of 1935, see section 79r of this title.
- Securities Exchange Act of 1934, see section 78u of this title.

Rules and regulations, authority of Commission to make, amend, and rescind, see section 77s of this title.

Venue of criminal proceedings under—
  Investment Advisers Act of 1940, see section 80b-14 of this title.
  Investment Company Act of 1940, see section 80a-43 of this title.
  Public Utility Holding Company Act of 1935, see section 79y of this title.
  Securities Exchange Act of 1934, see section 78aa of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see rule 65 and notes of Advisory Committee under the rule, Title 28, Appendix, Judiciary and Judicial Procedure.

Mandamus as abolished but relief yet available by appropriate action or motion under rules, see rule 81 and notes of Advisory Committee under the rule.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 77uuu of this title.

§ 77u. Hearings by Commission

All hearings shall be public and may be held before the Commission or an officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

(May 27, 1933, ch. 38, title I, § 21, 48 Stat. 86.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Hearings by Commission under—
  Investment Advisers Act of 1940, see section 80b-12 of this title.
  Investment Company Act of 1940, see section 80a-40 of this title.
  Public Utility Holding Company Act of 1935, see section 79s of this title.
  Securities Exchange Act of 1934, see section 78v of this title.
  Trust Indenture Act of 1939, see section 77ttt of this title.

§ 77v. Jurisdiction of offenses and suits

(a) The district courts of the United States, and the United States courts of any Territory, shall have jurisdiction of offenses and violations under this subchapter and under the rules and regulations promulgated by the Commission in respect thereto, and, concurrent with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by this subchapter. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, and 1292 of title 28. No case arising under this subchapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States. No costs shall be assessed for or against the Commission in any proceeding under this subchapter brought by or against it in the Supreme Court or such other courts.

(b) In case of contumacy or refusal to obey a subpena issued to any person, any of the said United States courts, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Commission may issue to such person an order requiring such person to appear before the Commission, or one of its examiners designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(May 27, 1933, ch. 38, title I, § 22, 48 Stat. 86; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Aug. 10, 1954, ch. 667, title I, § 11, 68 Stat. 686; Oct. 15, 1970, Pub. L. 91-452, title II, § 213, 84 Stat. 929.)

CODIFICATION

As originally enacted subsec. (a) contained references to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted "the district court of the United States for the District of Columbia" for "the Supreme Court of the District of Columbia", and act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia". However, the words "United States District Court for the District of Columbia" have now been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of Title 28 which states that "the District of Columbia constitutes one judicial district".

Reference to "sections 1254, 1291, and 1292 of title 28" was substituted for "sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347)" on authority of Act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28.

AMENDMENTS

1970—Subsec. (c). Pub. L. 91-452 struck out subsec. (c) which related to the immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

1954—Subsec. (a). Act Aug. 10, 1954, inserted in the second sentence "offer or" before "sale".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

SAVINGS PROVISION

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

CROSS REFERENCES

Contempt proceedings, see sections 401, 402, 3285, 3691, and 3771 of Title 18, Crimes and Criminal Procedure.

Enforcement of subpenas and immunity of witnesses under—
  Federal criminal procedure, generally, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.
  Investment Advisers Act of 1940, see section 80b-9 of this title.
  Investment Company Act of 1940, see section 80a-41 of this title.
  Public Utility Holding Company Act of 1935, see section 79r of this title.
  Securities Exchange Act of 1934, see section 78u of this title.
  Trust Indenture Act of 1939, see section 77uuu of this title.

Jurisdiction of offenses and suits under—
  Investment Advisers Act of 1940, see section 80b-14 of this title.
  Investment Company Act of 1940, see section 80a-43 of this title.
  Public Utility Holding Company Act of 1935, see section 79y of this title.
  Securities Exchange Act of 1934, see section 78aa of this title.
  Trust Indenture Act of 1939, see section 77vvv of this title.

Rules and regulations, authority of Commission to make, amend, and rescind, see section 77s of this title.

Venue of district courts generally, see section 1391 et seq. of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under rule 54, see note by Advisory Committee under rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

Costs, see rule 54.

One form of action, see rule 2.

Process, see rule 4.

Subpoena, see rule 45.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal contempts, see rule 42, Title 18, Appendix, Crimes and Criminal Procedure.

Subpoena, see rule 17.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77uuu, 77vvv of this title; title 7 section 1932.

§ 77w. Unlawful representations

Neither the fact that the registration statement for a security has been filed or is in effect nor the fact that a stop order is not in effect with respect thereto shall be deemed a finding by the Commission that the registration statement is true and accurate on its face or that it does not contain an untrue statement of fact or omit to state a material fact, or be held to mean that the Commission has in any way passed upon the merits of, or given approval to, such security. It shall be unlawful to make, or cause to be made to any prospective purchaser any representation contrary to the foregoing provisions of this section.

(May 27, 1933, ch. 38, title I, § 23, 48 Stat. 87.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Representations by Corporation of Foreign Security Holders as acting for Department of State or United States forbidden, see section 77kk of this title.

Representations of guaranty or recommendation by United States of security of registered holding company unlawful, see section 79z-2 of this title.

Unlawful representations under—
  Investment Advisers Act of 1940, see section 80b-8 of this title.
  Investment Company Act of 1940, see section 80a-34 of this title.
  Securities Exchange Act of 1934, see section 78z of this title.
  Trust Indenture Act of 1939, see section 77xxx of this title.

§ 77x. Penalties

Any person who willfully violates any of the provisions of this subchapter, or the rules and regulations promulgated by the Commission under authority thereof, or any person who willfully, in a registration statement filed under this subchapter, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both.

(May 27, 1933, ch. 38, title I, § 24, 48 Stat. 87; June 4, 1975, Pub. L. 94-29, § 27(a), 89 Stat. 163.)

AMENDMENTS

1975—Pub. L. 94-29 substituted "$10,000" for "$5,000".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Information and documents to determine eligibility of indenture trustee and analysis of indenture, section as inapplicable to, see section 77eee of this title.

Penalties under—
  Investment Advisers Act of 1940, see section 80b-17 of this title.
  Investment Company Act of 1940, see section 80a-48 of this title.
  Public Utility Holding Company Act of 1935, see section 79z-3 of this title.
  Securities Exchange Act of 1934, see section 78ff of this title.
  Trust Indenture Act of 1939, see section 77yyy of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 77eee of this title; title 7 section 1932.

§ 77y. Jurisdiction of other Government agencies over securities

Nothing in this subchapter shall relieve any person from submitting to the respective supervisory units of the Government of the United States information, reports, or other documents that may be required by any provision of law.

(May 27, 1933, ch. 38, title I, § 25, 48 Stat. 87.)

CROSS REFERENCES

Jurisdiction of other government agencies over securities unaffected when not conflicting with—

Investment Company Act of 1940, see section 80a-49 of this title.

Public Utility Holding Company Act of 1935, see section 79u of this title.

Trust Indenture Act of 1939, see section 77zzz of this title.

§ 77z. Separability of provisions

If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(May 27, 1933, ch. 38, title I, § 26, 48 Stat. 88.)

CROSS REFERENCES

Investment Advisers Act of 1940, see section 80b-19 of this title.

Investment Company Act of 1940, see section 80a-50 of this title.

Public Utility Holding Company Act of 1935, see section 79z-6 of this title.

Securities Exchange Act of 1934, see section 78gg of this title.

Trust Indenture Act of 1939, see section 77bbbb of this title.

§ 77aa. Schedule of information required in registration statement

SCHEDULE A

(1) The name under which the issuer is doing or intends to do business;

(2) the name of the State or other sovereign power under which the issuer is organized;

(3) the location of the issuer's principal business office, and if the issuer is a foreign or territorial person, the name and address of its agent in the United States authorized to receive notice;

(4) the names and addresses of the directors or persons performing similar functions, and the chief executive, financial and accounting officers, chosen or to be chosen if the issuer be a corporation, association, trust, or other entity; of all partners, if the issuer be a partnership; and of the issuer, if the issuer be an individual; and of the promoters in the case of a business to be formed, or formed within two years prior to the filing of the registration statement;

(5) the names and addresses of the underwriters;

(6) the names and addresses of all persons, if any, owning of record or beneficially, if known, more than 10 per centum of any class of stock of the issuer, or more than 10 per centum in the aggregate of the outstanding stock of the issuer as of a date within twenty days prior to the filing of the registration statement;

(7) the amount of securities of the issuer held by any person specified in paragraphs (4), (5), and (6) of this schedule, as of a date within twenty days prior to the filing of the registration statement, and, if possible, as of one year prior thereto, and the amount of the securities, for which the registration statement is filed, to which such persons have indicated their intention to subscribe;

(8) the general character of the business actually transacted or to be transacted by the issuer;

(9) a statement of the capitalization of the issuer, including the authorized and outstanding amounts of its capital stock and the proportion thereof paid up, the number and classes of shares in which such capital stock is divided, par value thereof, or if it has no par value, the stated or assigned value thereof, a description of the respective voting rights, preferences, conversion and exchange rights, rights to dividends, profits, or capital of each class, with respect to each other class, including the retirement and liquidation rights or values thereof;

(10) a statement of the securities, if any, covered by options outstanding or to be created in connection with the security to be offered, together with the names and addresses of all persons, if any, to be allotted more than 10 per centum in the aggregate of such options;

(11) the amount of capital stock of each class issued or included in the shares of stock to be offered;

(12) the amount of the funded debt outstanding and to be created by the security to be offered, with a brief description of the date, maturity, and character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a summarized statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect;

(13) the specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated;

(14) the remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly, during the past year and ensuing year to (a) the directors or persons performing similar functions, and (b) its officers and other persons, naming them wherever such remuneration exceeded $25,000 during any such year;

(15) the estimated net proceeds to be derived from the security to be offered;

(16) the price at which it is proposed that the security shall be offered to the public or the method by which such price is computed and any variation therefrom at which any portion of such security is proposed to be offered to any persons or classes of persons, other than the underwriters, naming them or specifying the class. A variation in price may be proposed prior to the date of the public offering of the

security, but the Commission shall immediately be notified of such variation;

(17) all commissions or discounts paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made, in connection with the sale of such security. A commission paid or to be paid in connection with the sale of such security by a person in which the issuer has an interest or which is controlled or directed by, or under common control with, the issuer shall be deemed to have been paid by the issuer. Where any such commission is paid the amount of such commission paid to each underwriter shall be stated;

(18) the amount or estimated amounts, itemized in reasonable detail, of expenses, other than commissions specified in paragraph (17) of this schedule, incurred or borne by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, authentication, and other charges;

(19) the net proceeds derived from any security sold by the issuer during the two years preceding the filing of the registration statement, the price at which such security was offered to the public, and the names of the principal underwriters of such security;

(20) any amount paid within two years preceding the filing of the registration statement or intended to be paid to any promoter and the consideration for any such payment;

(21) the names and addresses of the vendors and the purchase price of any property, or good will, acquired or to be acquired, not in the ordinary course of business, which is to be defrayed in whole or in part from the proceeds of the security to be offered, the amount of any commission payable to any person in connection with such acquisition, and the name or names of such person or persons, together with any expense incurred or to be incurred in connection with such acquisition, including the cost of borrowing money to finance such acquisition;

(22) full particulars of the nature and extent of the interest, if any, of every director, principal executive officer, and of every stockholder holding more than 10 per centum of any class of stock or more than 10 per centum in the aggregate of the stock of the issuer, in any property acquired, not in the ordinary course of business of the issuer, within two years preceding the filing of the registration statement or proposed to be acquired at such date;

(23) the names and addresses of counsel who have passed on the legality of the issue;

(24) dates of and parties to, and the general effect concisely stated of every material contract made, not in the ordinary course of business, which contract is to be executed in whole or in part at or after the filing of the registration statement or which contract has been made not more than two years before such filing. Any management contract or contract providing for special bonuses or profit-sharing arrangements, and every material patent or contract for a material patent right, and every contract by or with a public utility company or an affiliate thereof, providing for the giving or receiving of technical or financial advice or service (if such contract may involve a charge to any party thereto at a rate in excess of $2,500 per year in cash or securities or anything else of value), shall be deemed a material contract;

(25) a balance sheet as of a date not more than ninety days prior to the date of the filing of the registration statement showing all of the assets of the issuer, the nature and cost thereof, whenever determinable, in such detail and in such form as the Commission shall prescribe (with intangible items segregated), including any loan in excess of $20,000 to any officer, director, stockholder or person directly or indirectly controlling or controlled by the issuer, or person under direct or indirect common control with the issuer. All the liabilities of the issuer in such detail and such form as the Commission shall prescribe, including surplus of the issuer showing how and from what sources such surplus was created, all as of a date not more than ninety days prior to the filing of the registration statement. If such statement be not certified by an independent public or certified accountant, in addition to the balance sheet required to be submitted under this schedule, a similar detailed balance sheet of the assets and liabilities of the issuer, certified by an independent public or certified accountant, of a date not more than one year prior to the filing of the registration statement, shall be submitted;

(26) a profit and loss statement of the issuer showing earnings and income, the nature and source thereof, and the expenses and fixed charges in such detail and such form as the Commission shall prescribe for the latest fiscal year for which such statement is available and for the two preceding fiscal years, year by year, or, if such issuer has been in actual business for less than three years, then for such time as the issuer has been in actual business, year by year. If the date of the filing of the registration statement is more than six months after the close of the last fiscal year, a statement from such closing date to the latest practicable date. Such statement shall show what the practice of the issuer has been during the three years or lesser period as to the character of the charges, dividends or other distributions made against its various surplus accounts, and as to depreciation, depletion, and maintenance charges, in such detail and form as the Commission shall prescribe, and if stock dividends or avails from the sale of rights have been credited to income, they shall be shown separately with a statement of the basis upon which the credit is computed. Such statement shall also differentiate between any recurring and nonrecurring income and between any investment and operating income. Such statement shall be certified by an independent public or certified accountant;

(27) if the proceeds, or any part of the proceeds, of the security to be issued is to be applied directly or indirectly to the purchase of any business, a profit and loss statement of such business certified by an independent public or certified accountant, meeting the re-

quirements of paragraph (26) of this schedule, for the three preceding fiscal years, together with a balance sheet, similarly certified, of such business, meeting the requirements of paragraph (25) of this schedule of a date not more than ninety days prior to the filing of the registration statement or at the date such business was acquired by the issuer if the business was acquired by the issuer more than ninety days prior to the filing of the registration statement;

(28) a copy of any agreement or agreements (or, if identic agreements are used, the forms thereof) made with any underwriter, including all contracts and agreements referred to in paragraph (17) of this schedule;

(29) a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation of such opinion, when necessary, into the English language;

(30) a copy of all material contracts referred to in paragraph (24) of this schedule, but no disclosure shall be required of any portion of any such contract if the Commission determines that disclosure of such portion would impair the value of the contract and would not be necessary for the protection of the investors;

(31) unless previously filed and registered under the provisions of this subchapter, and brought up to date, (a) a copy of its articles of incorporation, with all amendments thereof and of its existing bylaws or instruments corresponding thereto, whatever the name, if the issuer be a corporation; (b) copy of all instruments by which the trust is created or declared, if the issuer is a trust; (c) a copy of its articles of partnership or association and all other papers pertaining to its organization, if the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization; and

(32) a copy of the underlying agreements or indentures affecting any stock, bonds, or debentures offered or to be offered.

In case of certificates of deposit, voting trust certificates, collateral trust certificates, certificates of interest or shares in unincorporated investment trusts, equipment trust certificates, interim or other receipts for certificates, and like securities, the Commission shall establish rules and regulations requiring the submission of information of a like character applicable to such cases, together with such other information as it may deem appropriate and necessary regarding the character, financial or otherwise, of the actual issuer of the securities and/or the person performing the acts and assuming the duties of depositor or manager.

SCHEDULE B

(1) Name of borrowing government or subdivision thereof;

(2) specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated;

(3) the amount of the funded debt and the estimated amount of the floating debt outstanding and to be created by the security to be offered, excluding intergovernmental debt, and a brief description of the date, maturity, character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect;

(4) whether or not the issuer or its predecessor has, within a period of twenty years prior to the filing of the registration statement, defaulted on the principal or interest of any external security, excluding intergovernmental debt, and, if so, the date, amount, and circumstances of such default, and the terms of the succeeding arrangement, if any;

(5) the receipts, classified by source, and the expenditures, classified by purpose, in such detail and form as the Commission shall prescribe for the latest fiscal year for which such information is available and the two preceding fiscal years, year by year;

(6) the names and addresses of the underwriters;

(7) the name and address of its authorized agent, if any, in the United States;

(8) the estimated net proceeds to be derived from the sale in the United States of the security to be offered;

(9) the price at which it is proposed that the security shall be offered in the United States to the public or the method by which such price is computed. A variation in price may be proposed prior to the date of the public offering of the security, but the Commission shall immediately be notified of such variation;

(10) all commissions paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which the underwriter is interested, made, in connection with the sale of such security. Where any such commission is paid, the amount of such commission paid to each underwriter shall be stated;

(11) the amount or estimated amounts, itemized in reasonable detail, of expenses, other than the commissions specified in paragraph (10) of this schedule, incurred or borne by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, and other charges;

(12) the names and addresses of counsel who have passed upon the legality of the issue;

(13) a copy of any agreement or agreements made with any underwriter governing the sale of the security within the United States; and

(14) an agreement of the issuer to furnish a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation, where necessary, into the English language. Such opinion shall set out in full all laws, decrees, ordinances, or other acts of Government under which the issue of such security has been authorized.

(May 27, 1933, ch. 38, title I, schedules A, B, 48 Stat. 88, 91.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Information filed by registered investment company in lieu of registration statement, see section 80a-24 of this title.

Prospectus, information required, see section 77j of this title.

Registration statement, information and documents required, see section 77g of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77g, 77j, 80a-24 of this title.

SUBCHAPTER II—FOREIGN SECURITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 25 section 646.

§ 77bb. "Corporation of Foreign Security Holders"; creation; principal office; branch offices

For the purpose of protecting, conserving, and advancing the interests of the holders of foreign securities in default, there is hereby created a body corporate with the name "Corporation of Foreign Security Holders" (herein called the "Corporation"). The principal office of the Corporation shall be located in the District of Columbia, but there may be established agencies or branch offices in any city or cities of the United States under rules and regulations prescribed by the board of directors.

(May 27, 1933, ch. 38, title II, § 201, 48 Stat. 92.)

§ 77cc. Directors of Corporation; appointment, term of office, and removal

The control and management of the Corporation shall be vested in a board of six directors, who shall be appointed and hold office in the following manner: As soon as practicable after the date this chapter takes effect the Federal Trade Commission (hereinafter in this subchapter called "Commission") shall appoint six directors, and shall designate a chairman and a vice chairman from among their number. After the directors designated as chairman and vice chairman cease to be directors, their successors as chairman and vice chairman shall be elected by the board of directors itself. Of the directors first appointed, two shall continue in office for a term of two years, two for a term of four years, and two for a term of six years, from the date this chapter takes effect, the term of each to be designated by the Commission at the time of appointment. Their successors shall be appointed by the Commission, each for a term of six years from the date of the expiration of the term for which his predecessor was appointed, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of such predecessor. No person shall be eligible to serve as a director who within the five years preceding has had any interest, direct or indirect, in any corporation, company, partnership, bank, or association which has sold or offered for sale any foreign securities. The office of a director shall be vacated if the board of directors shall, at a meeting specially convened for that purpose, by resolution passed by a majority of at least two-thirds of the board of directors, remove such member from office, provided that the member whom it is proposed to remove shall have seven days' notice sent to him of such meeting, and that he may be heard.

(May 27, 1933, ch. 38, title II, § 202, 48 Stat. 93.)

§ 77dd. Powers and duties of Corporation, generally

The Corporation shall have power to adopt, alter, and use a corporate seal; to make contracts; to lease such real estate as may be necessary for the transaction of its business; to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal; to require from trustees, financial agents, or dealers in foreign securities information relative to the original or present holders of foreign securities and such other information as may be required, and to issue subpenas therefor; to take over the functions of any fiscal and paying agents of any foreign securities in default; to borrow money for the purposes of this subchapter, and to pledge as collateral for such loans any securities deposited with the Corporation pursuant to this subchapter; by and with the consent and approval of the Commission to select, employ, and fix the compensation of officers, directors, members of committees, employees, attorneys, and agents of the Corporation, without regard to the provisions of other laws applicable to the employment and compensation of officers or employees of the United States; to define their authority and duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents; and to prescribe, amend, and repeal, by its board of directors, bylaws, rules, and regulations governing the manner in which its general business may be conducted and the powers granted to it by law may be exercised and enjoyed, together with provisions for such committees and the functions thereof as the board of directors may deem necessary for facilitating its business under this subchapter. The board of directors of the Corporation shall determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid.

(May 27, 1933, ch. 38, title II, § 203, 48 Stat. 93.)

CROSS REFERENCES

Charges on holders of foreign securities, see section 77hh of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 77hh of this title.

§ 77ee. Directors of Corporation, powers and duties generally

The board of directors may—

(1) Convene meetings of holders of foreign securities.

(2) Invite the deposit and undertake the custody of foreign securities which have defaulted in the payment either of principal or

interest, and issue receipts or certificates in the place of securities so deposited.

(3) Appoint committees from the directors of the Corporation and/or all other persons to represent holders of any class or classes of foreign securities which have defaulted in the payment either of principal or interest and determine and regulate the functions of such committees. The chairman and vice chairman of the board of directors shall be ex officio chairman and vice chairman of each committee.

(4) Negotiate and carry out, or assist in negotiating and carrying out, arrangements for the resumption of payments due or in arrears in respect of any foreign securities in default or for rearranging the terms on which such securities may in future be held or for converting and exchanging the same for new securities or for any other object in relation thereto; and under this paragraph any plan or agreement made with respect to such securities shall be binding upon depositors, providing that the consent of holders resident in the United States of 60 per centum of the securities deposited with the Corporation shall be obtained.

(5) Undertake, superintend, or take part in the collection and application of funds derived from foreign securities which come into the possession of or under the control or management of the Corporation.

(6) Collect, preserve, publish, circulate, and render available in readily accessible form, when deemed essential or necessary, documents, statistics, reports, and information of all kinds in respect of foreign securities, including particularly records of foreign external securities in default and records of the progress made toward the payment of past-due obligations.

(7) Take such steps as it may deem expedient with the view of securing the adoption of clear and simple forms of foreign securities and just and sound principles in the conditions and terms thereof.

(8) Generally, act in the name and on behalf of the holders of foreign securities the care or representation of whose interests may be entrusted to the Corporation; conserve and protect the rights and interests of holders of foreign securities issued, sold, or owned in the United States; adopt measures for the protection, vindication, and preservation or reservation of the rights and interests of holders of foreign securities either on any default in or on breach or contemplated breach of the conditions on which such foreign securities may have been issued, or otherwise; obtain for such holders such legal and other assistance and advice as the board of directors may deem expedient; and do all such other things as are incident or conducive to the attainment of the above objects.

(May 27, 1933, ch. 38, title II, § 204, 48 Stat. 94.)

CROSS REFERENCES

Charges on holders of foreign securities, see section 77hh of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 77hh of this title.

§ 77ff. Accounts and annual balance sheet of Corporation; audits

The board of directors shall cause accounts to be kept of all matters relating to or connected with the transactions and business of the Corporation, and cause a general account and balance sheet of the Corporation to be made out in each year, and cause all accounts to be audited by one or more auditors who shall examine the same and report thereon to the board of directors.

(May 27, 1933, ch. 38, title II, § 205, 48 Stat. 94.)

§ 77gg. Annual report by Corporation; printing and distribution

The Corporation shall make, print, and make public an annual report of its operations during each year, send a copy thereof, together with a copy of the account and balance sheet and auditor's report, to the Commission and to both Houses of Congress, and provide one copy of such report but not more than one on the application of any person and on receipt of a sum not exceeding $1: *Provided,* That the board of directors in its discretion may distribute copies gratuitously.

(May 27, 1933, ch. 38, title II, § 206, 48 Stat. 95.)

§ 77hh. Assessments by Corporation on holders of foreign securities

The Corporation may in its discretion levy charges, assessed on a pro rata basis, on the holders of foreign securities deposited with it: *Provided,* That any charge levied at the time of depositing securities with the Corporation shall not exceed one fifth of 1 per centum of the face value of such securities: *Provided further,* That any additional charges shall bear a close relationship to the cost of operations and negotiations including those enumerated in sections 77dd and 77ee of this title and shall not exceed 1 per centum of the face value of such securities.

(May 27, 1933, ch. 38, title II, § 207, 48 Stat. 95.)

§ 77ii. Subscriptions accepted by Corporation as loans; repayment

The Corporation may receive subscriptions from any person, foundation with a public purpose, or agency of the United States Government, and such subscriptions may, in the discretion of the board of directors, be treated as loans repayable when and as the board of directors shall determine.

(May 27, 1933, ch. 38, title II, § 208, 48 Stat. 95.)

§ 77jj. Loans to Corporation from Reconstruction Finance Corporation authorized

The Reconstruction Finance Corporation is authorized to loan out of its funds not to exceed $75,000 for the use of the Corporation.

(May 27, 1933, ch. 38, title II, § 209, 48 Stat. 95.)

Abolition of Reconstruction Finance Corporation

Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out as a note under section 601 of this title, abolished the Reconstruction Finance Corporation.

§ 77kk. Representations by Corporation as acting for Department of State or United States forbidden; interference with foreign negotiations forbidden

Notwithstanding the foregoing provisions of this subchapter, it shall be unlawful for, and nothing in this subchapter shall be taken or construed as permitting or authorizing, the Corporation in this subchapter created, or any committee of said Corporation, or any person or persons acting for or representing or purporting to represent it—

(a) to claim or assert or pretend to be acting for or to represent the Department of State or the United States Government;

(b) to make any statements or representations of any kind to any foreign government or its officials or the officials of any political subdivision of any foreign government that said Corporation or any committee thereof or any individual or individuals connected therewith were speaking or acting for the said Department of State or the United States Government; or

(c) to do any act directly or indirectly which would interfere with or obstruct or hinder or which might be calculated to obstruct, hinder, or interfere with the policy or policies of the said Department of State or the Government of the United States or any pending or contemplated diplomatic negotiations, arrangements, business or exchanges between the Government of the United States or said Department of State and any foreign government or any political subdivision thereof.

(May 27, 1933, ch. 38, title II, § 210, 48 Stat. 95.)

§ 77*ll*. Effective date of subchapter

This subchapter shall not take effect until the President finds that its taking effect is in the public interest and by proclamation so declares.

(May 27, 1933, ch. 38, title II, § 211, 48 Stat. 95.)

§ 77mm. Short title

This subchapter may be cited as the "Corporation of Foreign Bondholders Act, 1933."

(May 27, 1933, ch. 38, title II, § 212, 48 Stat. 95.)

SUBCHAPTER III—TRUST INDENTURES

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 78u, 80a-2, 80a-37, 80a-49, 80b-2 of this title; title 25 section 646.

§ 77aaa. Short title

This subchapter may be cited as the "Trust Indenture Act of 1939."

(May 27, 1933, ch. 38, title III, § 301, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149.)

Cross References

Corporation of Foreign Bondholders Act, 1933, see section 77mm of this title.

Investment Advisers Act of 1940, see section 80b-20 of this title.

Investment Company Act of 1940, see section 80a-51 of this title.

Public Utility Holding Company Act of 1935, see section 79 of this title.

Securities Act of 1933, see section 77a of this title.

Securities Exchange Act of 1934, see section 78a of this title.

§ 77bbb. Necessity for regulation

(a) Upon the basis of facts disclosed by the reports of the Securities and Exchange Commission made to the Congress pursuant to section 78jj of this title and otherwise disclosed and ascertained, it is hereby declared that the national public interest and the interest of investors in notes, bonds, debentures, evidences of indebtedness, and certificates of interest or participation therein, which are offered to the public, are adversely affected—

(1) when the obligor fails to provide a trustee to protect and enforce the rights and to represent the interests of such investors, notwithstanding the fact that (A) individual action by such investors for the purpose of protecting and enforcing their rights is rendered impracticable by reason of the disproportionate expense of taking such action, and (B) concerted action by such investors in their common interest through representatives of their own selection is impeded by reason of the wide dispersion of such investors through many States, and by reason of the fact that information as to the names and addresses of such investors generally is not available to such investors;

(2) when the trustee does not have adequate rights and powers, or adequate duties and responsibilities, in connection with matters relating to the protection and enforcement of the rights of such investors; when, notwithstanding the obstacles to concerted action by such investors, and the general and reasonable assumption by such investors that the trustee is under an affirmative duty to take action for the protection and enforcement of their rights, trust indentures (A) generally provide that the trustee shall be under no duty to take any such action, even in the event of default, unless it receives notice of default, demand for action, and indemnity, from the holders of substantial percentages of the securities outstanding thereunder, and (B) generally relieve the trustee from liability even for its own negligent action or failure to act;

(3) when the trustee does not have resources commensurate with its responsibilities, or has any relationship to or connection with the obligor or any underwriter of any securities of the obligor, or holds, beneficially or otherwise, any interest in the obligor or any such underwriter, which relationship, connection, or interest involves a material conflict with the interests of such investors;

(4) when the obligor is not obligated to furnish to the trustee under the indenture and to such investors adequate current information as to its financial condition, and as to the performance of its obligations with respect to the securities outstanding under such indenture; or when the communication of such in-

formation to such investors is impeded by the fact that information as to the names and addresses of such investors generally is not available to the trustee and to such investors;

(5) when the indenture contains provisions which are misleading or deceptive, or when full and fair disclosure is not made to prospective investors of the effect of important indenture provisions; or

(6) when, by reason of the fact that trust indentures are commonly prepared by the obligor or underwriter in advance of the public offering of the securities to be issued thereunder, such investors are unable to participate in the preparation thereof, and, by reason of their lack of understanding of the situation, such investors would in any event be unable to procure the correction of the defects enumerated in this subsection.

(b) Practices of the character above enumerated have existed to such an extent that, unless regulated, the public offering of notes, bonds, debentures, evidences of indebtedness, and certificates of interest or participation therein, by the use of means and instruments of transportation and communication in interstate commerce and of the mails, is injurious to the capital markets, to investors, and to the general public; and it is hereby declared to be the policy of this subchapter, in accordance with which policy all the provisions of this subchapter shall be interpreted, to meet the problems and eliminate the practices, enumerated in this section, connected with such public offerings.

(May 27, 1933, ch. 38, title III, § 302, as added Aug. 3, 1939, ch. 411, 53 Stat. 1150.)

REFERENCES IN TEXT

Section 78jj of this title, referred to in text, was omitted from this Code.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Findings and declaration of policy under Investment Company Act of 1940, see section 80a-1 of this title.

Findings under Investment Advisers Act of 1940, see section 80b-1 of this title.

Necessity for—
  Control of holding companies, see section 79a of this title.
  Regulation under Securities Exchange Act of 1934, see section 78b of this title.

§ 77ccc. Definitions

When used in this subchapter, unless the context otherwise requires—

(1) Any term defined in section 2 of the Securities Act of 1933 [15 U.S.C. 77b], and not otherwise defined in this section shall have the meaning assigned to such term in such section 2 [15 U.S.C. 77b].

(2) The terms "sale", "sell", "offer to sell", "offer for sale", and "offer" shall include all transactions included in such terms as provided in paragraph (3) of section 2 of the Securities Act of 1933 [15 U.S.C. 77b], except that an offer or sale of a certificate of interest or participation shall be deemed an offer or sale of the security or securities in which such certificate evidences an interest or participation if and only if such certificate gives the holder thereof the right to convert the same into such security or securities.

(3) The term "prospectus" shall have the meaning assigned to such term in paragraph (10) of section 2 of the Securities Act of 1933 [15 U.S.C. 77b], except that in the case of securities which are not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.], such term shall not include any communication (A) if it is proved that prior to or at the same time with such communication a written statement if any required by section 77fff of this title was sent or given to the persons to whom the communication was made, or (B) if such communication states from whom such statement may be obtained (if such statement is required by rules or regulations under paragraphs (1) or (2) of subsection (b) of section 77fff of this title) and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed and contain such other information as the Commission, by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

(4) The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertakng;[1] but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission.

(5) The term "director" means any director of a corporation, or any individual performing similar functions with respect to any organization whether incorporated or unincorporated.

(6) The term "executive officer" means the president, every vice president, every trust officer, the cashier, the secretary, and the treasurer of a corporation, and any individual customarily performing similar functions with respect to any organization whether incorporated or unincorporated, but shall not include the chairman of the board of directors.

(7) The term "indenture" means any mortgage, deed of trust, trust or other indenture, or similar instrument or agreement (including any supplement or amendment to any of the foregoing), under which securities are outstanding or are to be issued, whether or not any property, real or personal, is, or is to be, pledged, mortgaged, assigned, or conveyed thereunder.

(8) The term "application" or "application for qualification" means the application provided for in section 77ggg of this title, and includes any amendment thereto and any report, document, or memorandum accompa-

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[1] So in original. Probably should be "undertaking".

nying such application or incorporated therein by reference.

(9) The term "indenture to be qualified" means (A) the indenture under which there has been or is to be issued a security in respect of which a particular registration statement has been filed, or (B) the indenture in respect of which a particular application has been filed.

(10) The term "indenture trustee" means each trustee under the indenture to be qualified, and each successor trustee.

(11) The term "indenture security" means any security issued or issuable under the indenture to be qualified.

(12) The term "obligor", when used with respect to any such indenture security, means every person who is liable thereon, and, if such security is a certificate of interest or participation, such term means also every person who is liable upon the security or securities in which such certificate evidences an interest or participation; but such term shall not include the trustee under an indenture under which certificates of interest or participation, equipment trust certificates, or like securities are outstanding.

(13) The term "paying agent", when used with respect to any such indenture security, means any person authorized by an obligor thereon (A) to pay the principal of or interest on such security on behalf of such obligor, or (B) if such security is a certificate of interest or participation, equipment trust certificate, or like security, to make such payment on behalf of the trustee.

(14) The term "State" means any State of the United States.

(15) The term "Commission" means the Securities and Exchange Commission.

(16) The term "voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a person, or any security issued under or pursuant to any trust, agreement, or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such security are presently entitled to vote in the direction or management of the affairs of a person; and a specified percentage of the voting securities of a person means such amount of the outstanding voting securities of such person as entitles the holder or holders thereof to cast such specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such person are entitled to cast in the direction or management of the affairs of such person.

(17) The terms "Securities Act of 1933 [15 U.S.C. 77a et seq.]," "Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.]," and "Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.]" shall be deemed to refer, respectively, to such Acts, as amended, whether amended prior to or after the enactment of this subchapter.

(18) The term "Bankruptcy Act" means the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, as amended [11 U.S.C. 1 et seq.], whether amended prior to or after August 3, 1939.

(May 27, 1933, ch. 38, title III, § 303, as added Aug. 3, 1939, ch. 411, 53 Stat. 1151, and amended Aug. 10, 1954, ch. 667, title III, § 301, 68 Stat. 687.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in pars. (3) and (17), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

The Securities Exchange Act of 1934, referred to in par. (17), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

The Public Utility Holding Company Act of 1935, referred to in par. (17), is act Aug. 26, 1935, ch. 687, title I, 49 Stat. 838, which is classified generally to chapter 2C (§ 79 et seq.) of this title. For complete classification of this Act to the Code, see section 79 of this title and Tables volume.

The Bankruptcy Act, referred to in par. (18), is classified generally to section 1 et seq. of Title 11, Bankruptcy.

AMENDMENTS

1954—Act Aug. 10, 1954, in pars. (1), (2), (3) and (4), made formal changes in order to conform to amendments made by act Aug. 10, 1954, to sections 77b, 77e, and 77j of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Definition of terms—
- Cash transactions and self-liquidating paper, rules and regulations prescribing, see section 77sss of this title.
- Director and underwriter under Investment Advisers Act of 1940, see section 80b-2 of this title.
- Indenture security holder when preferential collection of claims against obligor is involved, see section 77kkk of this title.
- Sale or sell, and director under Securities Exchange Act of 1934, see section 78c of this title.
- Sale or sell, director, and voting security under Public Utility Holding Company Act of 1935, see section 79b of this title.
- Sale or sell, prospectus, underwriter, director, and voting security under Investment Company Act of 1940, see section 80a-2 of this title.
- Security and underwriter for purposes of determining eligibility and disqualification of indenture trustee, see section 77jjj of this title.

§ 77ddd. Exempted securities and transactions

(a) Specific securities exempted

The provisions of this subchapter shall not apply to any of the following securities:

(1) any security other than (A) a note, bond, debenture, or evidence of indebtedness, whether or not secured, or (B) a certificate of interest or participation in any such note,

bond, debenture, or evidence of indebtedness, or (C) a temporary certificate for, or guarantee of, any such note, bond, debenture, evidence of indebtedness, or certificate;

(2) any certificate of interest or participation in two or more securities having substantially different rights and privileges, or a temporary certificate for any such certificate;

(3) any security which, prior to or within six months after August 3, 1939, has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offering of any such security by an issuer subsequent to such six months;

(4)(A) any security exempted from the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.], by paragraphs (2) to (8), or (11) of subsection 3(a) thereof [15 U.S.C. 77c(a)];

(B) any security exempted from the provisions of the Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], by paragraph (2) of subsection 3(a) thereof, as amended by section 401 of the Employment Security Amendments of 1970 [15 U.S.C. 77c(a)(2)];

(5) any security issued under a mortgage indenture as to which a contract of insurance under the National Housing Act [12 U.S.C. 1701 et seq.] is in effect; and any such security shall be deemed to be exempt from the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.] to the same extent as though such security were specifically enumerated in section 3(a)(2) of such Act [15 U.S.C. § 77c(a)(2)];

(6) any note, bond, debenture, or evidence of indebtedness issued or guaranteed by a foreign government or by a subdivision, department, municipality, agency, or instrumentality thereof;

(7) any guarantee of any security which is exempted by this subsection;

(8) any security which has been or is to be issued otherwise than under an indenture, but this exemption shall not be applied within a period of twelve consecutive months to more than $250,000 aggregate principal amount of any securities of the same issuer;

(9) any security which has been or is to be issued under an indenture which limits the aggregate principal amount of securities at any time outstanding thereunder to $1,000,000 or less, but this exemption shall not be applied within a period of thirty-six consecutive months to more than $1,000,000 aggregate principal amount of securities of the same issuer; or

(10) any security issued under a mortgage or trust deed indenture as to which a contract of insurance under title XI of the National Housing Act [12 U.S.C. 1749aaa et seq.] is in effect; and any such security shall be deemed to be exempt from the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.] to the same extent as though such security were specifically enumerated in section 3(a)(2), as amended, of the Securities Act of 1933 [15 U.S.C. 77c(a)(2)].

In computing the aggregate principal amount of securities to which the exemptions provided by paragraphs (8) and (9) of this subsection may be applied, securities to which the provisions of sections 77eee and 77fff of this title would not have applied, irrespective of the provisions of those paragraphs, shall be disregarded.

(b) Application of sections 77eee and 77fff

The provisions of sections 77eee and 77fff of this title shall not apply (1) to any of the transactions exempted from the provisions of section 5 of the Securities Act of 1933 [15 U.S.C. 77e] by section 4 thereof [15 U.S.C. 77d] or (2) to any transaction which would be so exempted but for the last sentence of paragraph (11) of section 2 of such Act [15 U.S.C. 77b].

(c) Securities issued or proposed to be issued under indenture

The Commission shall, on application by the issuer and after opportunity for hearing thereon, by order exempt from any one or more provisions of this subchapter any security issued or proposed to be issued under any indenture under which, at the time such application is filed, securities referred to in paragraph (3) of subsection (a) of this section are outstanding or on January 1, 1959, such securities were outstanding, if and to the extent that the Commission finds that compliance with such provision or provisions, through the execution of a supplemental indenture or otherwise—

(1) would require, by reason of the provisions of such indenture, or the provisions of any other indenture or agreement made prior to August 3, 1939, or the provisions of any applicable law, the consent of the holders of securities outstanding under any such indenture or agreement; or

(2) would impose an undue burden on this issuer, having due regard to the public interest and the interests of investors.

(d) Securities issued by person existing under laws of foreign government

The Commission may, on application by the issuer and after opportunity for hearing thereon, by order exempt from any one or more of the provisions of this subchapter any security issued or proposed to be issued by a person organized and existing under the laws of a foreign government or a political subdivision thereof, if and to the extent that the Commission finds that compliance with such provision or provisions is not necessary in the public interest and for the protection of investors.

(e) Securities issued by small investment company

The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed herein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] if it finds, having regard to the purposes of that Act, that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors.

(May 27, 1933, ch. 38, title III, § 304, as added Aug. 3, 1939, ch. 411, 53 Stat. 1153, and amended Aug. 10, 1954, ch. 667, title III, § 302, 68 Stat. 687; Aug. 21, 1958, Pub. L. 85-699, title III, § 307(b), 72 Stat. 694; Sept. 13, 1960, Pub. L. 86-

760, 74 Stat. 902; Nov. 3, 1966, Pub. L. 89-754, title V, § 504(b), 80 Stat. 1278; Dec. 22, 1970, Pub. L. 91-567, § 6(c), 84 Stat. 1499.)

References in Text

The Securities Act of 1933, referred to in subsec. (a)(4), (5), and (10), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

The National Housing Act, referred to in subsec. (a)(5), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified generally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. Provisions of that act relating to insurance of mortages are contained in section 1707 et seq. of Title 12. For complete classification of this Act to the Code, see References in Text note set out under section 1701 of Title 12 and Tables volume.

Title XI of the National Housing Act, referred to in subsec. (a)(10), is classified to subchapter IX-B (§ 1749aaa et seq.) of chapter 13 of title 12.

The Small Business Investment Act of 1958, referred to in subsec. (e), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, which is classified generally to chapter 14B (§ 661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables volume.

Amendments

1970—Subsec. (a)(4). Pub. L. 91-567 designated existing provisions as cl. (A) and added cl. (B).

1966—Subsec. (a)(10). Pub. L. 89-754 added par. (10).

1960—Subsec. (c). Pub. L. 86-760 inserted "or on January 1, 1959, such securities were outstanding".

1958—Subsec. (e). Pub. L. 85-699 added subsec. (e).

1954—Subsec. (b). Act Aug. 10, 1954, deleted words "as heretofore amended," which were previously omitted in codification.

Effective Date of 1970 Amendment

Amendment by Pub. L. 91-567 applicable with respect to securities sold after Jan. 1, 1970, see section 6(d) of Pub. L. 91-567, set out as a note under section 77c of this title.

Effective Date of 1954 Amendment

Amendment effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Qualification of indentures covering securities not required to be registered, section as affecting, see section 77ggg of this title.

Securities not registered under Securities Act, section as affecting, see section 77fff of this title.

Section Referred to in Other Sections

This section is referred to in sections 77eee, 77fff, 77ggg of this title; title 12 section 2290.

§ 77eee. Securities required to be registered under Securities Act

(a) Information required

Subject to the provisions of section 77ddd of this title, a registration statement relating to a security shall include the following information and documents, as though such inclusion were required by the provisions of section 77g of this title—

(1) such information and documents as the Commission may by rules and regulations prescribe in order to enable the Commission to determine whether any person designated to act as trustee under the indenture under which such security has been or is to be issued is eligible to act as such under subsection (a) of section 77jjj of this title or has a conflicting interest as defined in subsection (b) of section 77jjj of this title; and

(2) an analysis of any provisions of such indenture with respect to (A) the definition of what shall constitute a default under such indenture, and the withholding of notice to the indenture security holders of any such default, (B) the authentication and delivery of the indenture securities and the application of the proceeds thereof, (C) the release or the release and substitution of any property subject to the lien of the indenture, (D) the satisfaction and discharge of the indenture, and (E) the evidence required to be furnished by the obligor upon the indenture securities to the trustee as to compliance with the conditions and covenants provided for in such indenture.

The information and documents required by paragraph (1) of this subsection with respect to the person designated to act as indenture trustee shall be contained in a separate part of such registration statement, which part shall be signed by such person. Such part of the registration statement shall be deemed to be a document filed pursuant to this subchapter, and the provisions of sections 77k, 77*l*, 77q, and 77x of this title shall not apply to statements therein or omissions therefrom.

(b) Refusal of registration statement

The Commission shall issue an order prior to the effective date of registration refusing to permit such a registration statement to become effective, if it finds that—

(1) the security to which such registration statement relates has not been or is not to be issued under an indenture;

(2) such indenture does not conform to the requirements of sections 77jjj to 77rrr of this title, inclusive; or

(3) any person designated as trustee under such indenture is not eligible to act as such under subsection (a) of section 77jjj of this title or has any conflicting interest as defined in subsection (b) of said section 77jjj;

but no such order shall be issued except after notice and opportunity for hearing within the periods and in the manner required with respect to refusal orders pursuant to section 77h(b) of this title. If and when the Commission deems that the objections on which such order was based have been met, the Commission shall enter an order rescinding such refusal order, and the registration shall become effective at the time provided in section 77h(a) of this title, or upon the date of such rescission, whichever shall be the later.

(c) Information required in prospectus

A prospectus relating to any such security shall include to the extent the Commission may prescribe by rules and regulations as necessary and appropriate in the public interest or for the protection of investors, as though such inclusion were required by section 77j of this title, a written statement containing the analysis set forth in the registration statement, of any indenture provisions with respect to the matters specified in paragraph (2) of subsection (a) of this section, together with a supplementary analysis, prepared by the Commission, of such provisions and of the effect thereof, if, in the opinion of the Commission, the inclusion of such supplementary analysis is necessary or appropriate in the public interest or for the protection of investors, and the Commission so declares by order after notice and, if demanded by the issuer, opportunity for hearing thereon. Such order shall be entered prior to the effective date of registration, except that if opportunity for hearing thereon is demanded by the issuer such order shall be entered within a reasonable time after such opportunity for hearing.

(d) Applicability of other statutory provisions

The provisions of sections 77k, 77*l*, 77q and 77x of this title, and the provisions of sections 77www and 77yyy of this title, shall not apply to statements in or omissions from any analysis required under the provisions of this section or section 77fff or 77ggg of this title.

(May 27, 1933, ch. 38, title III, § 305, as added Aug. 3, 1939, ch. 411, 53 Stat. 1154, and amended Aug. 10, 1954, ch. 667, title III, § 303, 68 Stat. 687.)

AMENDMENTS

1954—Subsec. (c). Act Aug. 10, 1954, authorized the Commission to prescribe by rule and regulation the extent to which summaries of indenture provisions must be contained in prospectuses.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Application for qualification of indenture—
  Section as applicable to, see section 77ggg of this title.
  To include information and documents required by this section, see section 77ggg of this title.

Computation of aggregate principal amount of securities for exemption purposes to disregard securities to which this section is not applicable, see section 77ddd of this title.

Definition of term, prospectus, as limited by subsec. (c) of this section, see section 77ccc of this title.

Order of disqualification of trustee for material conflict of interest in two or more indentures pursuant to subsec. (b) of this section, see section 77jjj of this title.

Prohibitions relating to interstate commerce and the mails unless prospectus requirements of this section are complied with, see section 77fff of this title.

Review of Commission orders pursuant to subsec. (b) of this section, see section 77vvv of this title.

Rules and regulations, authority of Commission to make, issue, amend, and rescind, see section 77sss of this title.

Transactions exempt from Securities Act of 1933, section as inapplicable to, see section 77ddd of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77ddd, 77fff, 77ggg, 77jjj, 77vvv of this title.

§ 77fff. Securities not registered under Securities Act

(a) Prohibitions affecting unregistered securities not issued under indenture

In the case of any security which is not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and to which this subsection is applicable notwithstanding the provisions of section 77ddd of this title, unless such security has been or is to be issued under an indenture and an application for qualification is effective as to such indenture, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

(b) Prohibitions affecting unregistered securities issued under indenture

In the case of any security which is not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.], but which has been or is to be issued under an indenture as to which an application for qualification is effective, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any such security, unless such prospectus, to the extent the Commission may prescribe by rules and regulations as necessary and appropriate in the public interest or for the protection of investors, includes or is accompanied by a written statement that contains the information specified in subsection (c) of section 77eee of this title; or

(2) to carry or to cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless, to the extent the Commission may prescribe by rules and regulations as necessary or appropriate in the public interest or for the protection of investors, accompanied or preceded by a written statement that contains the information specified in subsection (c) of section 77eee of this title.

(c) Necessity of issuance under indenture; application for qualification

It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell through the use or medium of any prospectus or otherwise any security which is not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and to which this subsection is applicable notwithstanding the provisions of section 77ddd of this title, unless such security has been or is to be issued under an indenture and an application for qualification has been filed as to such indenture, or while the application is the subject of a refusal order or stop order or (prior to qualification) any public proceeding or examination under section 77ggg(c) of this title.

(May 27, 1933, ch. 38, title III, § 306, as added Aug. 3, 1939, ch. 411, 53 Stat. 1155, and amended Aug. 10, 1954, ch. 667, title III, § 304, 68 Stat. 688.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (a) to (c), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

AMENDMENTS

1954—Subsec. (b). Act Aug. 10, 1954, authorized the Commission to prescribe the extent to which summaries of indenture provisions must be used in the sale of specified types of securities.

Subsec. (c). Act Aug. 10, 1954, added subsec. (c).

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Computation of aggregate principal amount of securities for exemption purposes to disregard securities to which this section is not applicable, see section 77ddd of this title.

Prospectus, definition of, see section 77ccc of this title.

Qualification of indentures covering securities not required to be registered, section as applicable, see section 77ggg of this title.

Statements in or omissions from analysis required under this section, provisions of sections 77k, 77*l*, 77q, 77x, 77www, and 77yyy of this title as inapplicable to, see section 77eee of this title.

Transactions exempt from Securities Act of 1933, section as inapplicable to, see section 77ddd of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77ccc, 77ddd, 77eee, 77ggg of this title.

§ 77ggg. Qualification of indentures covering securities not required to be registered

(a) Application; information required; availability of information to public

In the case of any security which is not required to be registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and to which subsection (a) of section 77fff of this title is applicable notwithstanding the provisions of section 77ddd of this title, an application for qualification of the indenture under which such security has been or is to be issued shall be filed with the Commission by the issuer of such security. Each such application shall be in such form, and shall be signed in such manner, as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. Each such application shall include the information and documents required by subsection (a) of section 77eee of this title. The information and documents required by paragraph (1) of such subsection with respect to the person designated to act as indenture trustee shall be contained in a separate part of such application, which part shall be signed by such person. Each such application shall also include such of the other information and documents which would be required to be filed in order to register such indenture security under the Securities Act of 1933 as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. An application may be withdrawn by the applicant at any time prior to the effective date thereof. Subject to the provisions of section 77uuu of this title, the information and documents contained in or filed with any application shall be made available to the public under such regulations as the Commission may prescribe, and copies thereof, photostatic or otherwise, shall be furnished to every applicant therefor at such reasonable charge as the Commission may prescribe.

(b) Filing of application

The filing with the Commission of an application, or of an amendment to an application, shall be deemed to have taken place upon the receipt thereof by the Commission, but, in the case of an application, only if it is accompanied or preceded by payment to the Commission of a filing fee in the amount of $100, such payment to be made in cash or by United States postal money order or certified or bank check, or in such other medium of payment as the Commission may authorize by rule and regulation.

(c) Applicability of other statutory provisions

The provisions of section 77h of this title and the provisions of subsection (b) of section 77eee of this title shall apply with respect to every such application, as though such application were a registration statement filed pursuant to the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.].

(May 27, 1933, ch. 38, title III, § 307, as added Aug. 3, 1939, ch. 411, 53 Stat. 1156.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (a) and (c), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

"Application" or "application for qualification" defined, see section 77ccc of this title.

Order of disqualification of trustee for material conflict of interest in two or more indentures pursuant to subsec. (c) of this section, see section 77jjj of this title.

Qualification of indenture when application becomes effective pursuant to this section, see section 77iii of this title.

Review of Commission orders pursuant to subsec. (c) of this section, see section 77vvv of this title.

Rules and regulations, authority of Commission to make, issue, amend, and rescind, see section 77sss of this title.

Statements in or omissions from analysis required under this section, provisions of sections 77k, 77*l*, 77q, 77x, 77www, and 77yyy of this title as inapplicable to, see section 77eee of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77ccc, 77eee, 77fff, 77iii, 77jjj, 77vvv of this title.

§ 77hhh. Integration of procedure with Securities Act and other Acts

(a) The Commission, by such rules and regulations or orders as it deems necessary or appropriate in the public interest or for the protection of investors, shall authorize the filing of any information or documents required to be filed with the Commission under this subchapter, or under the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.], by incorporating by reference any information or documents on file with the Commission under this subchapter or under any such Act.

(b) The Commission, by such rules and regulations or orders as it deems necessary or appropriate in the public interest or for the protection of investors, shall provide for the consolidation of applications, reports, and proceedings under this subchapter with registration statements, applications, reports, and proceedings under the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.].

(May 27, 1933, ch. 38, title III, § 308, as added Aug. 3, 1939, ch. 411, 53 Stat. 1156.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (a) and (b), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

The Securities Exchange Act of 1934, referred to in subsecs. (a) and (b), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

The Public Utility Holding Company Act of 1935, referred to in subsecs. (a) and (b), is act Aug. 26, 1935, ch. 687, title I, 49 Stat. 838, which is classified generally to chapter 2C (§ 79 et seq.) of this title. For complete classification of this Act to the Code, see section 79 of this title and Tables volume.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Rules and regulations, authority of Commission to make, issue, amend, and rescind, see section 77sss of this title.

§ 77iii. Effective time of qualification

(a) Effective time of registration or application for qualification of indenture

The indenture under which a security has been or is to be issued shall be deemed to have been qualified under this subchapter—

(1) when registration becomes effective as to such security; or

(2) when an application for the qualification of such indenture becomes effective, pursuant to section 77ggg of this title.

(b) Stop orders after effective time of qualification

After qualification has become effective as to the indenture under which a security has been or is to be issued, no stop order shall be issued pursuant to section 77h(d) of this title, suspending the effectiveness of the registration statement relating to such security or of the application for qualification of such indenture, except on one or more of the grounds specified in section 77h of this title.

(c) Effect of subsequent rule or regulation on qualification

The making, amendment, or rescission of a rule, regulation, or order under the provisions of this subchapter (except to the extent authorized by subsection (a) of section 77nnn of this title with respect to rules and regulations prescribed pursuant to such subsection) shall not affect the qualification, form, or interpretation of any indenture as to which qualification became effective prior to the making, amendment, or rescission of such rule, regulation, or order.

(d) Liability of trustee under qualified indenture

No trustee under an indenture which has been qualified under this subchapter shall be subject to any liability because of any failure of such indenture to comply with any of the provisions of this subchapter, or any rule, regulation, or order thereunder.

(e) Power of Commission to conduct investigation

Nothing in this subchapter shall be construed as empowering the Commission to conduct an investigation or other proceeding for the purpose of determining whether the provisions of an indenture which has been qualified under this subchapter are being complied with, or to enforce such provisions.

(May 27, 1933, ch. 38, title III, § 309, as added Aug. 3, 1939, ch. 411, 53 Stat. 1157.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Rules and regulations, authority of Commission to make, issue, amend, and rescind, see section 77sss of this title.

§ 77jjj. Eligibility and disqualification of trustee

(a) Persons eligible for appointment as trustee

(1) The indenture to be qualified shall require that there shall at all times be one or more trustees thereunder, at least one of whom shall at all times be a corporation organized and doing business under the laws of the United States or of any State or Territory or of the District of Columbia (referred to in this subchapter as the institutional trustee), which (A) is authorized under such laws to exercise corporate trust powers, and (B) is subject to supervision or examination by Federal, State, Territorial, or District of Columbia authority.

(2) The indenture to be qualified shall require that such institutional trustee shall have at all times a combined capital and surplus of a specified minimum amount, which shall not be less than $150,000. If such institutional trustee publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, the indenture may provide that, for the purposes of this paragraph, the combined capital and surplus of such trustee shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(3) If the indenture to be qualified requires or permits the appointment of one or more co-trustees in addition to such institutional trustee, such indenture shall provide that the rights, powers, duties, and obligations conferred or imposed upon the trustees or any of them shall be conferred or imposed upon and exercised or performed by such institutional trustee, or such institutional trustee and such co-trustees jointly, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed, such institutional trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties, and obligations shall be exercised and performed by such co-trustees.

(4) In the case of certificates of interest or participation, the indenture to be qualified shall require that the indenture trustee or trustees have the legal power to exercise all of the rights, powers, and privileges of a holder of the security or securities in which such certificates evidence an interest or participation.

(b) Disqualification of trustee

The indenture to be qualified shall provide that if any indenture trustee has or shall acquire any conflicting interest as hereinafter defined, (i) such trustee shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign, such resignation to become effective upon the appointment of a successor trustee and such successor's acceptance of such appointment, and the obligor upon the indenture securities shall take prompt steps to have a successor appointed in the manner provided in the indenture; and (ii) in the event that such trustee shall fail to comply with the provisions of clause (i) of this subsection, such trustee shall, within ten days after the expiration of such ninety-day period, transmit notice of such failure to the indenture security holders in the manner and to the extent provided in subsection (c) of section 77mmm of this title; and (iii) subject to the provisions of subsection (e) of section 77ooo of this title, any security holder who has been a bona fide holder of indenture securities for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of such trustee, and the appointment of a successor, if such trustee fails, after written request therefor by such holder, to comply with the provisions of clause (i) of this subsection. For the purposes of this subsection, an indenture trustee shall be deemed to have a conflicting interest if—

(1) such trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of an obligor upon the indenture securities are outstanding unless (A) the indenture securities are collateral trust notes under which the only collateral consists of securities issued under such other indenture, or (B) such other indenture is a collateral trust indenture under which the only collateral consists of indenture securities, or (C) such obligor has no substantial unmortgaged assets and is engaged primarily in the business of owning, or of owning and developing and/or operating, real estate, and the indenture to be qualified and such other indenture are secured by wholly separate and distinct parcels of real estate: *Provided*, That the indenture to be qualified may contain a provision excluding from the operation of this paragraph another indenture or indentures under which other securities, or certificates of interest or participation in other securities, of such an obligor are outstanding, if (i) the indenture to be qualified and such other indenture or indentures are wholly unsecured, and such other indenture or indentures are specifically described in the indenture to be qualified or are thereafter qualified under this subchapter, unless the Commission shall have found and declared by order pursuant to subsection (b) of section 77eee or subsection (c) of section 77ggg of this title that differences exist between the provisions of the indenture to be qualified and the provisions of such other indenture or indentures which are so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as such under one of such indentures, or (ii) the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under the indenture to be qualified and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as such under one of such indentures;

(2) such trustee or any of its directors or executive officers is an obligor upon the indenture securities or an underwriter for such an obligor;

(3) such trustee directly or indirectly controls or is directly or indirectly controlled by or is under direct or indirect common control with an obligor upon the indenture securities or an underwriter for such an obligor;

(4) such trustee or any of its directors or executive officers is a director, officer, partner, employee, appointee, or representative of an obligor upon the indenture securities, or of an underwriter (other than the trustee itself) for such an obligor who is currently engaged in the business of underwriting, except that (A) one individual may be a director and/or an executive officer of the trustee and a director and/or an executive officer of such obligor, but may not be at the same time an executive officer of both the trustee and of such obligor, and (B) if and so long as the number of directors of the trustee in office is more than nine, one additional individual may be a director and/or an executive officer of the trustee and a director of such obligor, and (C) such trustee may be designated by any such obligor or by any underwriter for any such obligor, to act in the capacity of transfer agent, registrar, custodian, paying agent, fiscal agent, escrow agent, or depositary, or in any other similar capacity, or, subject to the provisions of paragraph (1) of this subsection, to act as trustee, whether under an indenture or otherwise;

(5) 10 per centum or more of the voting securities of such trustee is beneficially owned either by an obligor upon the indenture securities or by any director, partner, or executive officer thereof, or 20 per centum or more of such voting securities is beneficially owned, collectively, by any two or more of such persons; or 10 per centum or more of the voting securities of such trustee is beneficially owned either by an underwriter for any such obligor or by any director, partner, or executive officer thereof, or is beneficially owned, collectively, by any two or more such persons;

(6) such trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined, (A) 5 per centum or more of the voting securities, or 10 per centum or more of any other class of security, of an obligor upon the indenture securities, not including indenture securities and securities issued under any other indenture under which such trustee is also trustee, or (B) 10 per centum or more of any class of security of an underwriter for any such obligor;

(7) such trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined, 5 per centum or more of the voting securities of any person who, to the knowledge of the trustee, owns 10 per centum or more of the voting securities of, or controls directly or indirectly or is under direct or indirect common control with, an obligor upon the indenture securities;

(8) such trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined, 10 per centum or more of any class of security of any person who, to the knowledge of the trustee, owns 50 per centum or more of the voting securities of an obligor upon the indenture securities; or

(9) such trustee owns, on May 15 in any calendar year, in the capacity of executor, administrator, testamentary or inter vivos trustee, guardian, committee or conservator, or in any other similar capacity, an aggregate of 25 per centum or more of the voting securities, or of any class of security, of any person, the beneficial ownership of a specified percentage of which would have constituted a conflicting interest under paragraph (6), (7), or (8) of this subsection. The indenture to be qualified may provide, as to any such securities of which the indenture trustee acquired ownership through becoming executor, administrator, or testamentary trustee of an estate which included them, that the provisions of the preceding sentence shall not apply, for a period of not more than two years from the date of such acquisition, to the extent that such securities included in such estate do not exceed 25 per centum of such voting securities or 25 per centum of any such class of security. The indenture to be qualified shall provide that promptly after May 15 in each calendar year, the trustee shall make a check of its holdings of such securities in any of the above-mentioned capacities as of such May 15. Such indenture shall also provide that if the obligor upon the indenture securities fails to make payment in full of principal or interest under such indenture when and as the same becomes due and payable, and such failure continues for thirty days thereafter, the trustee shall make a prompt check of its holdings of such securities in any of the above-mentioned capacities as of the date of the expiration of such thirty-day period, and after such date, notwithstanding the foregoing provisions of this paragraph, all such securities so held by the trustee, with sole or joint control over such securities vested in it, shall be considered as though beneficially owned by such trustee, for the purposes of paragraphs (6), (7), and (8) of this subsection.

The indenture to be qualified shall provide that the specification of percentages in paragraphs (5) to (9), inclusive, of this subsection shall not be construed as indicating that the ownership of such percentages of the securities of a person is or is not necessary or sufficient to constitute direct or indirect control for the purposes of paragraph (3) or (7) of this subsection.

For the purposes of paragraphs (6), (7), (8), and (9) of this subsection, (A) the terms "security" and "securities" shall include only such securities as are generally known as corporate securities, but shall not include any note or other evidence of indebtedness issued to evidence an obligation to repay moneys lent to a person by one or more banks, trust companies, or banking firms, or any certificate of interest or participation in any such note or evidence of indebtedness; (B) an obligation shall be deemed to be in default when a default in payment of principal shall have continued for thirty days or more, and shall not have been cured; and (C) the indenture trustee shall not be deemed the owner or holder of (i) any security which it holds as collateral security (as trustee or otherwise) for an obligation which is not in default as above defined, or (ii) any security which it holds as collateral security under the indenture to be qualified, irrespective of any default thereunder, or (iii) any security which it holds as agent for collection, or as custodian, escrow agent, or depositary, or in any similar representative capacity.

For the purposes of this subsection, the term "underwriter" when used with reference to an obligor upon the indenture securities means every person who, within three years prior to the time as of which the determination is made, was an underwriter of any security of such obligor outstanding at such time.

(c) Applicability of section

The Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.] shall not be held to establish or authorize the establishment of any standards regarding the eligibility and qualifications of any trustee or prospective trustee under an indenture to be qualified under this subchapter, or regarding the provisions to be included in any such indenture with respect to the eligibility and qualifications of the trustee thereunder, other than those established by the provisions of this section.

(May 27, 1933, ch. 38, title III, § 310, as added Aug. 3, 1939, ch. 411, 53 Stat. 1157.)

REFERENCES IN TEXT

The Public Utility Holding Company Act of 1935, referred to in subsec. (c), is act Aug. 26, 1935, ch. 687, title I, 49 Stat. 838, which is classified generally to chapter 2C (§ 79 et seq.) of this title. For complete classification of this Act to the Code, see section 79 of this title and Tables volume.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Definition of term, default, when preferential collection of claim against obligor is involved, see section 77kkk of this title.

Effect of prescribed indenture provisions, see section 77rrr of this title.

Information and documents in registration statement to determine eligibility and conflicting interest of indenture trustee under subsecs. (a) and (b) of this section, see section 77eee of this title.

Investigation of prospective trustee to determine eligibility under this section, see section 77uuu of this title.

Refusal order—

- When indenture does not conform to the requirements of this section, see section 77eee of this title.
- When indenture trustee is ineligible or has conflicting interest, see section 77eee of this title.

Reports by indenture trustee with respect to its eligibility and qualifications under this section, see section 77mmm of this title.

Rules and regulations prescribing method of calculating percentages of voting securities and other securities, see section 77sss of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77eee, 77mmm, 77rrr, 77sss, 77uuu of this title.

§ 77kkk. Preferential collection of claims against obligor

(a) Trustee as creditor of obligor

Subject to the provisions of subsection (b) of this section, the indenture to be qualified shall provide that if the indenture trustee shall be, or shall become, a creditor, directly or indirectly, secured or unsecured, of an obligor upon the indenture securities, within four months prior to a default as defined in the last paragraph of this subsection, or subsequent to such a default, then, unless and until such default shall be cured, such trustee shall set apart and hold in a special account for the benefit of the trustee individually and the indenture security holders—

(1) an amount equal to any and all reductions in the amount due and owing upon any claim as such creditor in respect of principal or interest, effected after the beginning of such four months' period and valid as against such obligor and its other creditors, except any such reduction resulting from the receipt or disposition of any property described in paragraph (2) of this subsection, or from the exercise of any right of setoff which the trustee could have exercised if a petition in bankruptcy had been filed by or against such obligor upon the date of such default; and

(2) all property received in respect of any claim as such creditor, either as security therefor, or in satisfaction or composition thereof, or otherwise, after the beginning of such four months' period, or an amount equal to the proceeds of any such property, if disposed of, subject, however, to the rights, if any, of such obligor and its other creditors in such property or such proceeds.

Nothing herein contained shall affect the right of the indenture trustee—

(A) to retain for its own account (i) payments made on account of any such claim by any person (other than such obligor) who is liable thereon, and (ii) the proceeds of the bona fide sale of any such claim by the trustee to a third person, and (iii) distributions made in cash, securities, or other property in respect of claims filed against such obligor in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act [11 U.S.C. 1 et seq.] or applicable State law;

(B) to realize, for its own account, upon any property held by it as security for any such claim, if such property was so held prior to the beginning of such four months' period;

(C) to realize, for its own account, but only to the extent of the claim hereinafter mentioned, upon any property held by it as security for any such claim, if such claim was created after the beginning of such four months' period and such property was received as security therefor simultaneously with the creation thereof, and if the trustee shall sustain the burden of proving that at the time such property was so received the trustee had no reasonable cause to believe that a default as defined in the last paragraph of this subsection would occur within four months; or

(D) to receive payment on any claim referred to in paragraph (B) or (C) of this subsection, against the release of any property held as security for such claim as provided in said paragraph (B) or (C), as the case may be, to the extent of the fair value of such property.

For the purposes of paragraphs (B), (C), and (D) of this subsection, property substituted after the beginning of such four months' period for property held as security at the time of such substitution shall, to the extent of the fair value of the property released, have the same status as the property released, and, to the extent that any claim referred to in any of such paragraphs is created in renewal of or in substitution for or for the purpose of repaying or refunding any preexisting claim of the indenture trustee as such creditor, such claim shall have the same status as such preexisting claim.

The indenture to be qualified shall provide that, if the trustee shall be required to account, the funds and property held in such special account and the proceeds thereof shall be apportioned between the trustee and the indenture security holders in such manner that the trustee and the indenture security holders realize, as a result of payments from such special account and payments of dividends on claims filed against such obligor in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act [11 U.S.C. 1 et seq.] or applicable State law, the same percentage of their respective claims, figured before crediting to the claim of the trustee anything on account of the receipt by it from such obligor of the funds and property in such special account and before crediting to the respective claims of the trustee and the indenture security holders dividends on claims filed against such obligor in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act or applicable State law, but after crediting thereon receipts on account of the indebtedness represented by their respective claims from all sources other than from such dividends and from the funds and property so held in such special account. As used in this paragraph, with respect to any claim, the term "dividends" shall include any distribution with respect to such claim, in bankruptcy or receivership or in proceedings for reorganization pursuant to the Bankruptcy Act or applicable State law, whether such distribution is made in cash, securities, or other property, but shall not include any such distribution with respect to the secured portion, if any, of such claim. The court in which such bankruptcy, receivership, or proceeding for reorganization is pending shall have jurisdiction (i) to apportion between the indenture trustee and the indenture security holders, in accordance with the provisions of this paragraph, the funds and property held in such special account and the proceeds thereof, or (ii) in lieu of such apportionment, in whole or in part, to give to the provisions of this paragraph due consideration in determining the fairness of the distributions to be made to the indenture trustee and the indenture security holders with respect to their respective claims, in which event it shall not be necessary to liquidate or to appraise the value of any securities or other property held in such special account or as security for any such claim, or to make a specific allocation of such distributions as between the secured and unsecured portions of such claims, or otherwise to apply the provisions of this paragraph as a mathematical formula.

Any indenture trustee who has resigned or been removed after the beginning of such four months' period shall be subject to the provisions of this subsection as though such resignation or removal had not occurred. Any indenture trustee who has resigned or been removed prior to the beginning of such four months' period shall be subject to the provisions of this subsection if and only if the following conditions exist—

(i) the receipt of property or reduction of claim which would have given rise to the obligation to account, if such indenture trustee had continued as trustee, occurred after the beginning of such four months' period; and

(ii) such receipt of property or reduction of claim occurred within four months after such resignation or removal.

As used in this subsection, the term "default" means any failure to make payment in full of principal or interest, when and as the same becomes due and payable, under any indenture which has been qualified under this subchapter, and under which the indenture trustee is trustee and the person of whom the indenture trustee is directly or indirectly a creditor is an obligor; and the term "indenture security holder" means all holders of securities outstanding under any such indenture under which any such default exists.

(b) Exclusion of creditor relationship arising from specified classes

The indenture to be qualified may contain provisions excluding from the operation of subsection (a) of this section a creditor relationship arising from—

(1) the ownership or acquisition of securities issued under any indenture, or any security or securities having a maturity of one year or more at the time of acquisition by the indenture trustee;

(2) advances authorized by a receivership or bankruptcy court of competent jurisdiction, or by the indenture, for the purpose of preserving the property subject to the lien of the indenture or of discharging tax liens or other prior liens or encumbrances on the trust estate, if notice of such advance and of the circumstances surrounding the making thereof is given to the indenture security holders, at the time and in the manner provided in the indenture;

(3) disbursements made in the ordinary course of business in the capacity of trustee under an indenture, transfer agent, registrar, custodian, paying agent, fiscal agent or depositary, or other similar capacity;

(4) an indebtedness created as a result of services rendered or premises rented; or an indebtedness created as a result of goods or securities sold in a cash transaction as defined in the indenture;

(5) the ownership of stock or of other securities of a corporation organized under the provisions of section 25(a) of the Federal Reserve Act, as amended [12 U.S.C. 611 et seq.], which is directly or indirectly a creditor of an obligor upon the indenture securities; or

(6) the acquisition, ownership, acceptance, or negotiation of any drafts, bills of exchange, acceptances, or obligations which fall within the classification of self-liquidating paper as defined in the indenture.

(c) Issue or sale of securities by registered holding company

In the exercise by the Commission of any jurisdiction under the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.] regarding the issue or sale, by any registered holding company or a subsidiary company thereof, of any security of such issuer or seller or of any other company to a person which is trustee under an indenture or indentures of such issuer or seller or other company, or of a subsidiary or associate company or affiliate of such issuer or seller or other company (whether or not such indenture or indentures are qualified or to be qualified under this subchapter), the fact that such trustee will thereby become a creditor, directly or indirectly, of any of the foregoing shall not constitute a ground for the Commission taking adverse action with respect to any application or declaration, or limiting the scope of any rule or regulation which would otherwise permit such transaction to take effect; but in any case in which such trustee is trustee under an indenture of the company of which it will thereby become a creditor, or of any subsidiary company thereof, this subsection shall not prevent the Commission from requiring (if such requirement would be authorized under the provisions of the Public Utility Holding Company Act of 1935) that such trustee, as such, shall effectively and irrevocably agree in writing, for the benefit of the holders from time to time of the securities from time to time outstanding under such indenture, to be bound by the provisions of this section, subsection (c) of section 77*ooo* of this title, and, in case of default (as such term is defined in such indenture), subsection (d) of section 77*ooo* of this title, as fully as though such provisions were included in such indenture. For the purposes of this subsection the terms "registered holding company", "subsidiary company", "associate company", and "affiliate" shall have the respective meanings assigned to such terms in section 2(a) of the Public Utility Holding Company Act of 1935 [15 U.S.C. 79b(a)].

(May 27, 1933, ch. 38, title III, § 311, as added Aug. 3, 1939, ch. 411, 53 Stat. 1161.)

References in Text

The Bankruptcy Act, referred to in subsec. (a), is classified generally to section 1 et seq. of Title 11, Bankruptcy.

Section 25(a) of the Federal Reserve Act, as amended, referred to in subsec. (b)(5), is classified to subchapter II (§ 611 et seq.) of chapter 6 of Title 12, Banks and Banking.

The Public Utility Holding Company Act of 1935, referred to subsec. (c), is act Aug. 26, 1935, ch. 687, title I, 49 Stat. 838, which is classified generally to chapter 2C (§ 79 et seq.) of this title. For complete classification of this Act to the Code, see section 79 of this title and Tables volume.

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Definition of term default, when disqualification of trustee is involved, see section 77jjj of this title.

Effect of prescribed indenture provisions, see section 77rrr of this title.

Refusal order when indenture does not conform to requirements of this section, see section 77eee of this title.

Reports by indenture trustee not to include an indebtedness based upon creditor relationship arising under subsec. (b) (2 to 4, 6) of this section, see section 77mmm of this title.

Rules and regulations—
  Authority of Commission to make, issue, amend, and rescind, see section 77sss of this title.
  Prescribing definitions of terms, cash transaction, and self-liquidating paper, to include creditor relationships referred to in this section, see section 77sss of this title.

Section Referred to in Other Sections

This section is referred to in sections 77eee, 77mmm, 77rrr, 77sss of this title.

§ 77*lll*. Bondholders' lists

(a) Periodic filing of information by obligor with trustee

The indenture to be qualified shall contain provisions requiring each obligor upon the indenture securities to furnish or cause to be furnished to the institutional trustee thereunder at stated intervals of not more than six months, and at such other times as such trustee may request in writing, all information in the possession or control of such obligor, or of any of its paying agents, as to the names and addresses of the indenture security holders, and requiring such trustee to preserve, in as current a form as is reasonably practicable, all such information so furnished to it or received by it in the capacity of paying agent.

(b) Access of information to security holders

The indenture to be qualified shall also contain provisions requiring that, within five business days after the receipt by the institutional trustee of a written application by any three or more indenture security holders stating that the applicants desire to communicate with other indenture security holders with respect to their rights under such indenture or under the indenture securities, and accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, and by reasonable proof that each such applicant has owned an indenture security for a period of at least six months preceding the date of such application, such institutional trustee shall, at its election, either—

(1) afford to such applicants access to all information so furnished to or received by such trustee; or

(2) inform such applicants as to the approximate number of indenture security holders according to the most recent information so furnished to or received by such trustee, and as to the approximate cost of mailing to such indenture security holders the form of proxy or other communication, if any, specified in such application.

If such trustee shall elect not to afford to such applicants access to such information, such trustee shall, upon the written request of such applicants, mail to all such indenture security holders copies of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to such trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of such mailing, unless within five days after such tender, such trustee shall mail to such applicants, and file with the Commission together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of such trustee, such mailing would be contrary to the best interests of the indenture security holders or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. After opportunity for hearing upon the objections specified in the written statement so filed, the Commission may, and if demanded by such trustee or by such applicants shall, enter an order either sustaining one or more of such objections or refusing to sustain any of them. If the Commission shall enter an order refusing to sustain any of such objections, or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all objections so sustained have been met, and shall enter an order so declaring, such trustee shall mail copies of such material to all such indenture security holders with reasonable promptness after the entry of such order and the renewal of such tender.

(c) Disclosure of information deemed not violative of any law

The disclosure of any such information as to the names and addresses of the indenture security holders in accordance with the provisions of this section, regardless of the source from which such information was derived, shall not be deemed to be a violation of any existing law, or of any law hereafter enacted which does not specifically refer to this section, nor shall such trustee be held accountable by reason of mailing any material pursuant to a request made under subsection (b) of this section.

(May 27, 1933, ch. 38, title III, § 312, as added Aug. 3, 1939, ch. 411, 53 Stat. 1164.)

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Effect of prescribed indenture provisions, see section 77rrr of this title.

Indenture to provide for transmission of reports to all known holders of indenture securities, see section 77mmm of this title.

Proxies—

- Investment companies, use of mails or instrumentality of interstate commerce to solicit, unlawful, see section 80a-20 of this title.
- Person soliciting by mail or through interstate commerce respecting plan of reorganization, etc., to file copy with Commission, see section 80a-25 of this title.
- Securities registered on National Security Exchange, restrictions, see section 78n of this title.

Refusal order when indenture does not conform to requirements of this section, see section 77eee of this title.

Section Referred to in Other Sections

This section is referred to in sections 77eee, 77rrr of this title.

§ 77mmm. Reports by indenture trustee

(a) Report to security holders; time; contents

The indenture to be qualified shall contain provisions requiring the indenture trustee to transmit to the indenture security holders as hereinafter provided, at stated intervals of not more than 12 months, a brief report with respect to—

(1) its eligibility and its qualifications under section 77jjj of this title, or in lieu thereof, if to the best of its knowledge it has continued to be eligible and qualified under such section, a written statement to such effect;

(2) the character and amount of any advances made by it, as indenture trustee, which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge, prior to that of the indenture securities, on the trust estate or on property or funds held or collected by it as such trustee, if such advances so remaining unpaid aggregate more than one-half of 1 per centum of the principal amount of the indenture securities outstanding on such date;

(3) the amount, interest rate, and maturity date of all other indebtedness owning to it in its individual capacity, on the date of such report, by the obligor upon the indenture securities, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in any manner described in paragraphs (2), (3), (4), or (6) of subsection (b) of section 77kkk of this title;

(4) the property and funds physically in its possession as indenture trustee on the date of such report;

(5) any release, or release and substitution, of property subject to the lien of the indenture (and the consideration therefor, if any) which it has not previously reported;

(6) any additional issue of indenture securities which it has not previously reported; and

(7) any action taken by it in the performance of its duties under the indenture which it has not previously reported and which in its opinion materially affects the indenture securities or the trust estate, except action in respect of a default, notice of which has been or is to be withheld by it in accordance with an indenture provision authorized by subsection (b) of section 77*ooo* of this title.

(b) Additional reports to security holders

The indenture to be qualified shall also contain provisions requiring the indenture trustee to transmit to the indenture security holders as hereinafter provided, within the times hereinafter specified, a brief report with respect to—

(1) the release, or release and substitution, of property subject to the lien of the indenture (and the consideration therefor, if any) unless the fair value of such property, as set forth in the certificate or opinion required by paragraph (1) of subsection (d) of section 77nnn of this title, is less than 10 per centum of the principal amount of indenture securi-

ties outstanding at the time of such release, or such release and substitution, such report to be so transmitted within 90 days after such time; and

(2) the character and amount of any advances made by it as such since the date of the last report transmitted pursuant to the provisions of subsection (a) of this section (or if no such report has yet been so transmitted, since the date of execution of the indenture), for the reimbursement of which it claims or may claim a lien or charge, prior to that of the indenture securities, on the trust estate or on property or funds held or collected by it as such trustee, and which it has not previously reported pursuant to this paragraph, if such advances remaining unpaid at any time aggregate more than 10 per centum of the principal amount of indenture securities outstanding at such time, such report to be so transmitted within 90 days after such time.

(c) Additional parties to whom reports to be transmitted

The indenture to be qualified shall also provide that reports pursuant to this section shall be transmitted by mail—

(1) to all registered holders of indenture securities, as the names and addresses of such holders appear upon the registration books of the obligor upon the indenture securities;

(2) to such holders of indenture securities as have, within the two years preceding such transmission, filed their names and addresses with the indenture trustee for that purpose; and

(3) except in the case of reports pursuant to subsection (b) of this section, to all holders of indenture securities whose names and addresses have been furnished to or received by the indenture trustee pursuant to section 77*lll* of this title.

(d) Filing of report with stock exchanges

The indenture to be qualified shall also provide that a copy of each such report shall, at the time of such transmission to indenture security holders, be filed with each stock exchange upon which the indenture securities are listed, and also with the Commission.

(May 27, 1933, ch. 38, title III, § 313, as added Aug. 3, 1939, ch. 411, 53 Stat. 1165.)

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Effect of prescribed indenture provisions, see section 77rrr of this title.

Indenture provisions for notice of defaults pursuant to subsec. (c) of this section, see section 77*ooo* of this title.

Refusal order when indenture does not conform to the requirements of this section, see section 77eee of this title.

Transmission of—

Notice to indenture security holders relating to disqualification of trustee, see section 77jjj of this title.

Summaries of certain information to indenture security holders pursuant to subsec. (c) of this section, see section 77nnn of this title.

Section Referred to in Other Sections

This section is referred to in sections 77eee, 77jjj, 77nnn, 77*ooo*, 77rrr of this title.

§ 77nnn. Reports by obligor; evidence of compliance with indenture provisions

(a) Periodic reports

The indenture to be qualified shall contain provisions requiring each person who, as set forth in the registration statement or application, is or is to be an obligor upon the indenture securities covered thereby—

(1) to file with the indenture trustee copies of the annual reports and of the information, documents, and other reports (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) which such obligor is required to file with the Commission pursuant to section 78m or 78*o*(d) of this title; or, if the obligor is not required to file information, documents, or reports pursuant to either of such sections, then to file with the indenture trustee and the Commission, in accordance with rules and regulations prescribed by the Commission, such of the supplementary and periodic information, documents, and reports which may be required pursuant to section 78m of this title, in respect of a security listed and registered on a national securities exchange as may be prescribed in such rules and regulations;

(2) to file with the indenture trustee and the Commission, in accordance with rules and regulations prescribed by the Commission, such additional information, documents, and reports with respect to compliance by such obligor with the conditions and covenants provided for in the indenture, as may be required by such rules and regulations, including, in the case of annual reports, if required by such rules and regulations, certificates or opinions of independent public accountants, conforming to the requirements of subsection (e) of this section, as to compliance with conditions or covenants, compliance with which is subject to verification by accountants, but no such certificate or opinion shall be required as to any matter specified in clauses (A), (B), or (C) of paragraph (3) of subsection (c) of this section; and

(3) to transmit to the holders of the indenture securities upon which such person is an obligor, in the manner and to the extent provided in subsection (c) of section 77mmm of this title, such summaries of any information, documents, and reports required to be filed by such obligor pursuant to the provisions of paragraph (1) or (2) of this subsection as may be required by rules and regulations prescribed by the Commission.

The rules and regulations prescribed under this subsection shall be such as are necessary or appropriate in the public interest or for the protection of investors, having due regard to the types of indentures, and the nature of the business of the class of obligors affected thereby, and the amount of indenture securities outstanding under such indentures, and, in the case of any such rules and regulations prescribed after the indentures to which they apply have been qualified under this subchapter, the additional expense, if any, of complying with such rules and regulations. Such rules and regulations may be prescribed either before or after qualification becomes effective as to any such indenture.

(b) Evidence of recording of indenture

If the indenture to be qualified is or is to be secured by the mortgage or pledge of property, such indenture shall contain provisions requiring the obligor upon the indenture securities to furnish to the indenture trustee—

(1) promptly after the execution and delivery of the indenture, an opinion of counsel (who may be of counsel for such obligor) either stating that in the opinion of such counsel the indenture has been properly recorded and filed so as to make effective the lien intended to be created thereby, and reciting the details of such action, or stating that in the opinion of such counsel no such action is necessary to make such lien effective; and

(2) at least annually after the execution and delivery of the indenture, an opinion of counsel (who may be of counsel for such obligor) either stating that in the opinion of such counsel such action has been taken with respect to the recording, filing, re-recording, and refiling of the indenture as is necessary to maintain the lien of such indenture, and reciting the details of such action, or stating that in the opinion of such counsel no such action is necessary to maintain such lien.

(c) Evidence of compliance with conditions precedent

The indenture to be qualified shall contain provisions requiring the obligor upon the indenture securities to furnish to the indenture trustee evidence of compliance with the conditions precedent, if any, provided for in the indenture (including any covenants compliance with which constitutes a condition precedent) which relate to the authentication and delivery of the indenture securities, to the release or the release and substitution of property subject to the lien of the indenture, to the satisfaction and discharge of the indenture, or to any other action to be taken by the indenture trustee at the request or upon the application of such obligor. Such evidence shall consist of the following:

(1) certificates or opinions made by officers of such obligor who are specified in the indenture, stating that such conditions precedent have been complied with;

(2) an opinion of counsel (who may be of counsel for such obligor) stating that in his opinion such conditions precedent have been complied with; and

(3) in the case of conditions precedent compliance with which is subject to verification by accountants (such as conditions with respect to the preservation of specified ratios, the amount of net quick assets, negative-pledge clauses, and other similar specific conditions), a certificate or opinion of an accountant, who, in the case of any such conditions precedent to the authentication and delivery of indenture securities, and not otherwise, shall be an independent public accountant selected or approved by the indenture trustee in the exercise of reasonable care, if the aggregate principal amount of such indenture securities and of other indenture securities authenticated and delivered since the commencement of the then current calendar year (other than those with respect to which a certificate or opinion of an accountant is not required, or with respect to which a certificate or opinion of an independent public accountant has previously been furnished) is 10 per centum or more of the aggregate amount of the indenture securities at the time outstanding; but no certificate or opinion need be made by any person other than an officer or employee of such obligor who is specified in the indenture, as to (A) dates or periods not covered by annual reports required to be filed by the obligor, in the case of conditions precedent which depend upon a state of facts as of a date or dates or for a period or periods different from that required to be covered by such annual reports, or (B) the amount and value of property additions, except as provided in paragraph (3) of subsection (d) of this section, or (C) the adequacy of depreciation, maintenance, or repairs.

(d) Certificates of fair value

If the indenture to be qualified is or is to be secured by the mortgage or pledge of property or securities, such indenture shall contain provisions—

(1) requiring the obligor upon the indenture securities to furnish to the indenture trustee a certificate or opinion of an engineer, appraiser, or other expert as to the fair value of any property or securities to be released from the lien of the indenture, which certificate or opinion shall state that in the opinion of the person making the same the proposed release will not impair the security under such indenture in contravention of the provisions thereof, and requiring further that such certificate or opinion shall be made by an independent engineer, appraiser, or other expert, if the fair value of such property or securities and of all other property or securities released since the commencement of the then current calendar year, as set forth in the certificates or opinions required by this paragraph, is 10 per centum or more of the aggregate principal amount of the indenture securities at the time outstanding; but such a certificate or opinion of an independent engineer, appraiser, or other expert shall not be required in the case of any release of property or securities, if the fair value thereof as set forth in the certificate or opinion required by this paragraph is less than $25,000 or less than 1 per centum of the aggregate principal amount of the indenture securities at the time outstanding;

(2) requiring the obligor upon the indenture securities to furnish to the indenture trustee a certificate or opinion of an engineer, appraiser, or other expert as to the fair value to such obligor of any securities (other than indenture securities and securities secured by a lien prior to the lien of the indenture upon property subject to the lien of the indenture), the deposit of which with the trustee is to be made the basis for the authentication and de-

livery of indenture securities, the withdrawal of cash constituting a part of the trust estate or the release of property or securities subject to the lien of the indenture, and requiring further that if the fair value to such obligor of such securities and of all other such securities made the basis of any such authentication and delivery, withdrawal, or release since the commencement of the then current calendar year, as set forth in the certificates or opinions required by this paragraph, is 10 per centum or more of the aggregate principal amount of the indenture securities at the time outstanding, such certificate or opinion shall be made by an independent engineer, appraiser, or other expert and, in the case of the authentication and delivery of indenture securities, shall cover the fair value to such obligor of all other such securities so deposited since the commencement of the current calendar year as to which a certificate or opinion of an independent engineer, appraiser, or other expert has not previously been furnished; but such a certificate of an independent engineer, appraiser, or other expert shall not be required with respect to any securities so deposited, if the fair value thereof to such obligor as set forth in the certificate or opinion required by this paragraph is less than $25,000 or less than 1 per centum of the aggregate principal amount of the indenture securities at the time outstanding; and

(3) requiring the obligor upon the indenture securities to furnish to the indenture trustee a certificate or opinion of an engineer, appraiser, or other expert as to the fair value to such obligor of any property the subjection of which to the lien of the indenture is to be made the basis for the authentication and delivery of indenture securities, the withdrawal of cash constituting a part of the trust estate, or the release of property or securities subject to the lien of the indenture, and requiring further that if

(A) within six months prior to the date of acquisition thereof by such obligor, such property has been used or operated, by a person or persons other than such obligor, in a business similar to that in which it has been or is to be used or operated by such obligor, and

(B) the fair value to such obligor of such property as set forth in such certificate or opinion is not less than $25,000 and not less than 1 per centum of the aggregate principal amount of the indenture securities at the time outstanding,

such certificate or opinion shall be made by an independent engineer, appraiser, or other expert and, in the case of the authentication and delivery of indenture securities, shall cover the fair value to the obligor of any property so used or operated which has been so subjected to the lien of the indenture since the commencement of the then current calendar year, and as to which a certificate or opinion of an independent engineer, appraiser, or other expert has not previously been furnished.

If the indenture to be qualified so provides, any such certificate or opinion may be made by an officer or employee of the obligor upon the indenture securities who is specified in the indenture, except in cases in which this subsection requires that such certificate or opinion be made by an independent person. In such cases, such certificate or opinion shall be made by an independent engineer, appraiser, or other expert selected or approved by the indenture trustee in the exercise of reasonable care.

(e) Recitals as to basis of certificate or opinion

Each certificate or opinion with respect to compliance with a condition or covenant provided for in the indenture shall include (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

(f) Parties may provide for additional evidence

Nothing in this section shall be construed either as requiring the inclusion in the indenture to be qualified of provisions that the obligor upon the indenture securities shall furnish to the indenture trustee any other evidence of compliance with the conditions and covenants provided for in the indenture than the evidence specified in this section, or as preventing the inclusion of such provisions in such indenture, if the parties so agree.

(May 27, 1933, ch. 38, title III, § 314, as added Aug. 3, 1939, ch. 411, 53 Stat. 1167.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Certificates of fair value as affecting indenture provisions requiring transmission to security holders report with respect to release of property subject to lien of indenture, see section 77mmm of this title.

Effect of prescribed indenture provisions, see section 77rrr of this title.

Indenture provisions for examination by trustee of evidence furnished pursuant to this section to determine conformity to requirements of indenture, see section 77*ooo* of this title.

Qualification, form, etc., of indenture not affected by subsequent rules, regulations or orders, see section 77iii.

Refusal order when indenture does not conform to requirements of this section, see section 77eee of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77eee, 77iii, 77mmm, 77*ooo*, 77rrr of this title.

§ 77*ooo*. Duties and responsibility of the trustee

(a) Duties prior to default

The indenture to be qualified may provide that, prior to default (as such term is defined in such indenture)—

(1) the indenture trustee shall not be liable except for the performance of such duties as are specifically set out in such indenture; and

(2) the indenture trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, in the absence of bad faith on the part of such trustee, upon certificates or opinions conforming to the requirements of the indenture;

but such indenture shall contain provisions requiring the indenture trustee to examine the evidence furnished to it pursuant to section 77nnn of this title to determine whether or not such evidence conforms to the requirements of the indenture.

(b) Notice of defaults

The indenture to be qualified shall contain provisions requiring the indenture trustee to give to the indenture security holders, in the manner and to the extent provided in subsection (c) of section 77mmm of this title, notice of all defaults known to the trustee, within ninety days after the occurrence thereof: *Provided*, That such indenture may provide that, except in the case of default in the payment of the principal of or interest on any indenture security, or in the payment of any sinking or purchase fund installment, the trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or responsible officers, of the trustee in good faith determine that the withholding of such notice is in the interests of the indenture security holders.

(c) Duties of the trustee in case of default

The indenture to be qualified shall contain provisions requiring the indenture trustee to exercise in case of default (as such term is defined in such indenture) such of the rights and powers vested in it by such indenture, and to use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(d) Responsibility of the trustee

The indenture to be qualified shall not contain any provisions relieving the indenture trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that—

(1) such indenture may contain the provisions authorized by paragraphs (1) and (2) of subsection (a) of this section;

(2) such indenture may contain provisions protecting the indenture trustee from liability for any error of judgment made in good faith by a responsible officer or officers of such trustee, unless it shall be proved that such trustee was negligent in ascertaining the pertinent facts; and

(3) such indenture may contain provisions protecting the indenture trustee with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of not less than a majority in principal amount of the indenture securities at the time outstanding (determined as provided in subsection (a) of section 77ppp of this title) relating to the time, method, and place of conducting any proceeding for any remedy available to such trustee, or exercising any trust or power conferred upon such trustee, under such indenture.

(e) Undertaking for costs

The indenture to be qualified may contain provisions to the effect that all parties thereto, including the indenture security holders, agree that the court may in its discretion require, in any suit for the enforcement of any right or remedy under such indenture, or in any suit against the trustee for any action taken or omitted by it as trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorney's fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant: *Provided*, That the provisions of this subsection shall not apply to any suit instituted by such trustee, to any suit instituted by any indenture security holder, or group of indenture security holders, holding in the aggregate more than 10 per centum in principal amount of the indenture securities outstanding, or to any suit instituted by any indenture security holder for the enforcement of the payment of the principal of or interest on any indenture security, on or after the respective due dates expressed in such indenture security.

(May 27, 1933, ch. 38, title III, § 315, as added Aug. 3, 1939, ch. 411, 53 Stat. 1171.)

CROSS REFERENCES

Effect of prescribed indenture provisions, see section 77rrr of this title.

Indenture to include provisions of subsecs. (c) and (d) of this section when issue or sale of securities by registered holding company to indenture trustee of company is involved, see section 77kkk of this title.

Refusal order when indenture does not conform to requirements of this section, see section 77eee of this title.

Removal of trustee and appointment of successor subject to subsec. (e) of this section, see section 77jjj of this title.

Reports by indenture trustee not to include action taken in respect to default, notice of which is withheld pursuant to subsec. (b) of this section, see section 77mmm of this title.

Undertaking for costs and reasonable attorneys' fees under—

- Securities Act of 1933, see section 77k of this title.
- Securities Exchange Act of 1934, see sections 78i and 78r of this title.
- This subchapter for misleading statements, see section 77www of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Costs, see rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77eee, 77jjj, 77kkk, 77mmm, 77rrr of this title.

§ 77ppp. Directions and waivers by bondholders; prohibition of impairment of holder's right to payment

(a) The indenture to be qualified may contain provisions—

(1) authorizing the holders of not less than a majority in principal amount of the indenture securities at the time outstanding (A) to direct the time, method, and place of conducting any proceeding for any remedy available to such trustee, or exercising any trust or power conferred upon such trustee, under such indenture, or (B) on behalf of the holders of all such indenture securities, to consent to the waiver of any past default and its consequences; or

(2) authorizing the holders of not less than 75 per centum in principal amount of the indenture securities at the time outstanding to consent on behalf of the holders of all such indenture securities to the postponement of any interest payment for a period not exceeding three years from its due date.

For the purposes of this subsection and paragraph (3) of subsection (d) of section 77*ooo* of this title, in determining whether the holders of the required principal amount of indenture securities have concurred in any such direction or consent, indenture securities owned by any obligor upon the indenture securities, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with any such obligor, shall be disregarded, except that for the purposes of determining whether the indenture trustee shall be protected in relying on any such direction or consent, only indenture securities which such trustee knows are so owned shall be so disregarded.

(b) The indenture to be qualified shall provide that, notwithstanding any other provision thereof, the right of any holder of any indenture security to receive payment of the principal of and interest on such indenture security, on or after the respective due dates expressed in such indenture security, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder, except as to a postponement of an interest payment consented to as provided in paragraph (2) of subsection (a) of this section, and except that such indenture may contain provisions limiting or denying the right of any such holder to institute any such suit, if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver, or loss of the lien of such indenture upon any property subject to such lien.

(May 27, 1933, ch. 38, title III, § 316, as added Aug. 3, 1939, ch. 411, 53 Stat. 1172.)

Cross References

Effect of prescribed indenture provisions, see section 77rrr of this title.

Refusal order when indenture does not conform to requirements of this section, see section 77eee of this title.

Section Referred to in Other Sections

This section is referred to in sections 77eee, 77*ooo*, 77rrr of this title.

§ 77qqq. Special powers of trustee; duties of paying agents

(a) The indenture to be qualified shall contain provisions—

(1) authorizing the indenture trustee, in the case of a default in payment of the principal of any indenture security, when and as the same shall become due and payable, or in the case of a default in payment of the interest on any such security, when and as the same shall become due and payable and the continuance of such default for such period as may be prescribed in such indenture, to recover judgment, in its own name and as trustee of an express trust, against the obligor upon the indenture securities for the whole amount of such principal and interest remaining unpaid; and

(2) authorizing such trustee to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of such trustee and of the indenture security holders allowed in any judicial proceedings relative to the obligor upon the indenture securities, its creditors, or its property.

(b) The indenture to be qualified shall provide that each paying agent shall hold in trust for the benefit of the indenture security holders or the indenture trustee all sums held by such paying agent for the payment of the principal of or interest on the indenture securities, and shall give to such trustee notice of any default by any obligor upon the indenture securities in the making of any such payment.

(May 27, 1933, ch. 38, title III, § 317, as added Aug. 3, 1939, ch. 411, 53 Stat. 1173.)

Cross References

Effect of prescribed indenture provisions, see section 77rrr of this title.

Refusal order when indenture does not conform to requirements of this section, see section 77eee of this title.

Section Referred to in Other Sections

This section is referred to in sections 77eee, 77rrr of this title.

§ 77rrr. Effect of prescribed indenture provisions

(a) The indenture to be qualified shall provide that if any provision thereof limits, qualifies, or conflicts with another provision which is required to be included in such indenture by any of sections 77jjj to 77qqq of this title, inclusive, such required provision shall control.

(b) The indenture to be qualified may contain, in addition to provisions specifically authorized under this subchapter to be included therein, any other provisions the inclusion of which is not in contravention of any provision of this subchapter.

(May 27, 1933, ch. 38, title III, § 318, as added Aug. 3, 1939, ch. 411, 53 Stat. 1173.)

CROSS REFERENCES

Refusal order when indenture does not conform to requirements of this section, see section 77eee of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 77eee of this title.

§ 77sss. Rules, regulations, and orders

(a) Authority of Commission; subject matter of rules, etc.

The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as it may deem necessary or appropriate in the public interest or for the protection of investors to carry out the provisions of this subchapter, including rules and regulations defining accounting, technical, and trade terms used in this subchapter. Among other things, the Commission shall have authority, (1) by rules and regulations, to prescribe for the purposes of section 77jjj(b) of this title the method (to be fixed in indentures to be qualified under this subchapter) of calculating percentages of voting securities and other securities; (2) by rules and regulations, to prescribe the definitions of the terms "cash transaction" and "self-liquidating paper" which shall be included in indentures to be qualified under this subchapter, which definitions shall include such of the creditor relationships referred to in paragraphs (4) and (6) of subsection (b) of section 77kkk of this title as to which the Commission determines that the application of subsection (a) of section 77kkk of this title is not necessary in the public interest or for the protection of investors, having due regard for the purposes of such subsection; and (3) for the purposes of this subchapter, to prescribe the form or forms in which information required in any statement, application, report, or other document filed with the Commission shall be set forth. For the purpose of its rules or regulations the Commission may classify persons, securities, indentures, and other matters within its jurisdiction and prescribe different requirements for different classes of persons, securities, indentures, or matters.

(b) Rules and regulations effective upon publication

Subject to the provisions of chapter 15 of title 44 and regulations prescribed under the authority thereof, the rules and regulations of the Commission under this subchapter shall be effective upon publication in the manner which the Commission shall prescribe, or upon such later date as may be provided in such rules and regulations.

(c) Exemption from liability for any acts taken in good faith in conformity with rules, etc.

No provision of this subchapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(May 27, 1933, ch. 38, title III, § 319, as added Aug. 3, 1939, ch. 411, 53 Stat. 1173.)

CODIFICATION

In subsec. (b), "chapter 15 of title 44" was substituted for "the Federal Register Act" on authority of section 2(b) of Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1305, section 1 of which enacted Title 44, Public Printing and Documents.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Rules and regulations—
  Contrary stipulations void, see section 77aaaa of this title.
  Information and documents to be included in registration statement, see section 77eee of this title.
  Integration of procedure with Securities Act and other acts, see section 77hhh of this title.
  Liability of trustee for noncompliance of indenture, see section 77iii of this title.
  Penalties for violation of, see section 77yyy of this title.
  Qualification, form, or interpretation of indenture unaffected by subsequent making, amendment, or rescission of rule or regulation, see section 77iii of this title.
  Qualification of indentures covering securities not required to be registered, see section 77ggg of this title.
  Reports by obligor, see section 77nnn of this title.
  Transactions involving issue or sale of securities by registered holding company to indenture trustee of company, see section 77kkk of this title.
  Unlawful representations, see section 77xxx of this title.
Rules and regulations under—
  Investment Advisers Act of 1940, see section 80b-11 of this title.
  Investment Company Act of 1940, see section 80a-37 of this title.
  Public Utility Holding Company Act of 1935, see section 79t of this title.
  Securities Act of 1933, see section 77s of this title.
  Securities Exchange Act of 1934, see sections 78c and 78w of this title.

§ 77ttt. Hearings by Commission

Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

(May 27, 1933, ch. 38, title III, § 320, as added Aug. 3, 1939, ch. 411, 53 Stat. 1174.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Hearings by Commission under—
  Investment Advisers Act of 1940, see section 80b-12 of this title.
  Investment Company Act of 1940, see section 80a-40 of this title.
  Public Utility Holding Company Act of 1935, see section 79s of this title.
  Securities Act of 1933, see section 77u of this title.
  Securities Exchange Act of 1934, see section 78v of this title.

§ 77uuu. Special powers of the Commission

(a) Investigatory powers

For the purpose of any investigation or any other proceeding which, in the opinion of the Commission, is necessary and proper for the enforcement of this subchapter, any member of the Commission, or any officer thereof designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such books, papers, correspondence, memoranda, contracts, agreements, or other records may be required from any place in the United States or in any Territory at any designated place of investigation or hearing. In addition, the Commission shall have the powers with respect to investigations and hearings, and with respect to the enforcement of, and offenses and violations under, this subchapter and rules and regulations and orders prescribed under the authority thereof, provided in sections 77t and 77v(b), (c) of this title.

(b) Availability of reports from other offices; restrictions

The Treasury Department, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Reserve Banks, and the Federal Deposit Insurance Corporation are authorized, under such conditions as they may prescribe, to make available to the Commission such reports, records, or other information as they may have available with respect to trustees or prospective trustees under indentures qualified or to be qualified under this subchapter, and to make through their examiners or other employees for the use of the Commission, examinations of such trustees or prospective trustees. Every such trustee or prospective trustee shall, as a condition precedent to qualification of such indenture, consent that reports of examinations by Federal, State, Territorial, or District authorities may be furnished by such authorities to the Commission upon request therefor.

Notwithstanding any provision of this subchapter, no report, record, or other information made available to the Commission under this subsection, no report of an examination made under this subsection for the use of the Commission, no report of an examination made of any trustee or prospective trustee by any Federal, State, Territorial, or District authority having jurisdiction to examine or supervise such trustee, no report made by any such trustee or prospective trustee to any such authority, and no correspondence between any such authority and any such trustee or prospective trustee, shall be divulged or made known or available by the Commission or any member, officer, agent, or employee thereof, to any person other than a member, officer, agent, or employee of the Commission: *Provided*, That the Commission may make available to the Attorney General of the United States, in confidence, any information obtained from such records, reports of examination, other reports, or correspondence, and deemed necessary by the Commission, or requested by him, for the purpose of enabling him to perform his duties under this subchapter.

(c) Investigation of prospective trustees

Any investigation of a prospective trustee, or any proceeding or requirement for the purpose of obtaining information regarding a prospective trustee, under any provision of this subchapter, shall be limited—

(1) to determining whether such prospective trustee is qualified to act as trustee under the provisions of subsection (b) of section 77jjj of this title;

(2) to requiring the inclusion in the registration statement or application of information with respect to the eligibility of such prospective trustee under paragraph (1) of subsection (a) of section 77jjj of this title; and

(3) to requiring the inclusion in the registration statement or application of the most recent published report of condition of such prospective trustee, as described in paragraph (2) of subsection (a) of section 77jjj of this title, or, if the indenture does not contain the provision with respect to combined capital and surplus authorized by the last sentence of paragraph (2) of subsection (a) of section 77jjj of this title, to determining whether such prospective trustee is eligible to act as such under paragraph (2) of subsection (a) of section 77jjj of this title.

(d) Appointment and compensation of necessary officers and employees

The provisions of section 78d(b) of this title shall be applicable with respect to the power of the Commission to appoint and fix the compensation of such officers, attorneys, examiners, and other experts, and such other officers and employees, as may be necessary for carrying out its functions under this subchapter.

(May 27, 1933, ch. 38, title III, § 321, as added Aug. 3, 1939, ch. 411, 53 Stat. 1174.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in the Comptroller of the Currency, referred to in this section, were not included in the transfer of functions of officers, agencies and employees of the Department of the Treasury to the Secretary of the Treasury, made by Reorg. Plan No. 26 of 1950, § 1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Administration of oaths, etc., under—
- Investment Advisers Act of 1940, see section 80b-9 of this title.
- Investment Company Act of 1940, see section 80a-41 of this title.
- Public Utility Holding Company Act of 1935, see section 79r of this title.
- Securities Act of 1933, see section 77s of this title.
- Securities Exchange Act of 1934, see section 78u of this title.

Availability of information and documents contained in application for qualification of indenture as subject to this section, see section 77ggg of this title.

Section Referred to in Other Sections

This section is referred to in section 77ggg of this title.

§ 77vvv. Court review of orders; jurisdiction of offenses and suits

(a) Orders of the Commission under this subchapter (including orders pursuant to the provisions of sections 77eee(b) and 77ggg(c) of this title) shall be subject to review in the same manner, upon the same conditions, and to the same extent, as provided in section 9 of the Securities Act of 1933 [15 U.S.C. 77i], with respect to orders of the Commission under such Act.

(b) Jurisdiction of offenses and violations under, and jurisdiction and venue of suits and actions brought to enforce any liability created by, this subchapter, or any rules or regulations or orders prescribed under the authority thereof, shall be as provided in section 22(a) of the Securities Act of 1933 [15 U.S.C. 77v(a)].

(May 27, 1933, ch. 38, title III, § 322, as added Aug. 3, 1939, ch. 411, 53 Stat. 1175.)

References in Text

Such Act, referred to in subsec. (a), means the Securities Act of 1933, approved May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Jurisdiction of offenses and suits under—
  Investment Advisers Act of 1940, see section 80b-14 of this title.
  Investment Company Act of 1940, see section 80a-43 of this title.
  Public Utility Holding Company Act of 1935, see section 79y of this title.
  Securities Exchange Act of 1934, see section 78aa of this title.
Review of orders under—
  Investment Advisers Act of 1940, see section 80b-13 of this title.
  Investment Company Act of 1940, see section 80a-42 of this title.
  Public Utility Holding Company Act of 1935, see section 79x of this title.
  Securities Exchange Act of 1934, see section 78y of this title.
Rules and regulations, authority of Commission to make, issue, amend, and rescind, see section 77sss of this title.

§ 77www. Liability for misleading statements

(a) Any person who shall make or cause to be made any statement in any application, report, or document filed with the Commission pursuant to any provisions of this subchapter, or any rule, regulation, or order thereunder, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or who shall omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall be liable to any person (not knowing that such statement was false or misleading or of such omission) who, in reliance upon such statement or omission, shall have purchased or sold a security issued under the indenture to which such application, report, or document relates, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading or of such omission. A person seeking to enforce such liability may sue at law or in equity in any court of competent jurisdiction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit and assess reasonable costs, including reasonable attorneys' fees, against either party litigant, having due regard to the merits and good faith of the suit or defense. No action shall be maintained to enforce any liability created under this section unless brought within one year after the discovery of the facts constituting the cause of action and within three years after such cause of action accrued.

(b) The rights and remedies provided by this subchapter shall be in addition to any and all other rights and remedies that may exist under the Securities Act of 1933 [15 U.S.C. 77a et seq.], or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.], or otherwise at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this subchapter shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of.

(May 27, 1933, ch. 38, title III, § 323, as added Aug. 3, 1939, ch. 411, 53 Stat. 1176.)

References in Text

The Securities Act of 1933, referred to in subsec. (b), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

The Securities Exchange Act of 1934, referred to in subsec. (b), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

The Public Utility Holding Company Act of 1935, referred to in subsec. (b), is act Aug. 26, 1935, ch. 687, title I, 49 Stat. 838, which is classified generally to chapter 2C (§ 79 et seq.) of this title. For complete classification of this Act to the Code, see section 79 of this title and Tables volume.

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Additional remedies under—
  Public Utility Holding Company Act of 1935, see section 79p of this title.

  - Securities Act of 1933, see section 77p of this title.
  - Securities Exchange Act of 1934, see section 78bb of this title.

Civil liabilities on account of false registration statement, see section 77k of this title.

Fraudulent interstate transactions, see section 77q of this title.

Liability for misleading statements under—
  - Public Utility Holding Company Act of 1935, see section 79p of this title.
  - Securities Exchange Act of 1934, see section 78r of this title.

Limitation of actions under—
  - Securities Act of 1933, see section 77m of this title.
  - Securities Exchange Act of 1934, see sections 78i and 78r of this title.

Statements in or omissions from analysis required under sections 77eee-77ggg of this title, section as inapplicable to, see section 77eee of this title.

Undertaking for costs under—
  - Securities Act of 1933, see section 77k of this title.
  - Securities Exchange Act of 1934, see sections 78i and 78r of this title.
  - This subchapter in suit to enforce right or remedy or suit against trustee, see section 77ooo of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Costs, see rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

One form of action, see rule 2.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 77eee of this title.

§ 77xxx. Unlawful representations

It shall be unlawful for any person in offering, selling or issuing any security to represent or imply in any manner whatsoever that any action or failure to act by the Commission in the administration of this subchapter means that the Commission has in any way passed upon the merits of, or given approval to, any trustee, indenture or security, or any transaction or transactions therein, or that any such action or failure to act with regard to any statement or report filed with or examined by the Commission pursuant to this subchapter or any rule, regulation, or order thereunder, has the effect of a finding by the Commission that such statement or report is true and accurate on its face or that it is not false or misleading.

(May 27, 1933, ch. 38, title III, § 324, as added Aug. 3, 1939, ch. 411, 53 Stat. 1176, and amended Aug. 10, 1954, ch. 667, title III, § 305, 68 Stat. 688.)

AMENDMENTS

1954—Act Aug. 10, 1954, substituted "offering, selling, or issuing" for "issuing or selling".

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Representation of guaranty or recommendation by United States of registered holding company's security, see section 79z-2 of this title.

Representations by Corporation of Foreign Security Holders as acting for Department of State or United States forbidden, see section 77kk of this title.

Rules and regulations, authority of Commission to make, issue, amend, and rescind, see section 77sss of this title.

Unlawful representations under—
  - Investment Advisers Act of 1940, see section 80b-8 of this title.
  - Investment Company Act of 1940, see section 80a-34 of this title.
  - Securities Act of 1933, see section 77w of this title.
  - Securities Exchange Act of 1934, see section 78z of this title.

§ 77yyy. Penalties

Any person who willfully violates any provision of this subchapter or any rule, regulation, or order thereunder, or any person who willfully, in any application, report, or document filed or required to be filed under the provisions of this subchapter or any rule, regulation, or order thereunder, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both.

(May 27, 1933, ch. 38, title III, § 325, as added Aug. 3, 1939, ch. 411, 53 Stat. 1177, and amended June 4, 1975, Pub. L. 94-29, § 27(d), 89 Stat. 163.)

AMENDMENTS

1975—Pub. L. 94-29 substituted "$10,000" for "$5,000".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

CROSS REFERENCES

Penalties under—
  - Investment Advisers Act of 1940, see section 80b-17 of this title.
  - Investment Company Act of 1940, see section 80a-48 of this title.
  - Public Utility Holding Company Act of 1935, see section 79z-3 of this title.
  - Securities Act of 1933, see section 77x of this title.
  - Securities Exchange Act of 1934, see section 78ff of this title.

Rules and regulations, authority of Commission to make, issue, amend and rescind, see section 77sss of this title.

Statements in or omissions from analysis required under sections 77eee to 77ggg of this title, section as inapplicable to, see section 77eee of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 77eee of this title.

§ 77zzz. Effect on existing law

Except as otherwise expressly provided, nothing in this subchapter shall affect (1) the jurisdiction of the Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.], or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.], over any person, security, or contract, or (2) the rights, obligations, duties, or liabilities of any person under such acts; nor shall anything in this subchapter affect the jurisdiction of any other commission, board, agency, or officer of the United States or of any State or political subdivision of any State, over any person or security, insofar as such jurisdiction does not conflict with any provision of this subchapter or any rule, regulation, or order thereunder.

(May 27, 1933, ch. 38, title III, § 326, as added Aug. 3, 1939, ch. 411, 53 Stat. 1177.)

References in Text

The Securities Act of 1933, referred to in text, is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

The Securities Exchange Act of 1934, referred to in text, is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

The Public Utility Holding Company Act of 1935, referred to in text, is act Aug. 26, 1935, ch. 687, title I, 49 Stat. 838, which is classified generally to chapter 2C (§ 79 et seq.) of this title. For complete classification of this Act to the Code, see section 79 of this title and Tables volume.

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Jurisdiction of other government agencies over securities under—

- Investment Company Act of 1940, see section 80a-49 of this title.
- Public Utility Holding Company Act of 1935, see section 79u of this title.
- Securities Act of 1933, see sections 77r and 77y of this title.
- Securities Exchange Act of 1934, see section 78bb of this title.

§ 77aaaa. Contrary stipulations void

Any condition, stipulation, or provision binding any person to waive compliance with any provision of this subchapter or with any rule, regulation, or order thereunder shall be void.

(May 27, 1933, ch. 38, title III, § 327, as added Aug. 3, 1939, ch. 411, 53 Stat. 1177.)

Cross References

Contrary stipulations void under—

- Investment Advisers Act of 1940, see section 80b-15 of this title.
- Investment Company Act of 1940, see section 80a-46 of this title.
- Public Utility Holding Company Act of 1935, see section 79z of this title.
- Securities Act of 1933, see section 77n of this title.
- Securities Exchange Act of 1934, see section 78cc of this title.

§ 77bbbb. Separability of provisions

If any provision of this subchapter or the application of such provision to any person or circumstance shall be held invalid, the remainder of the subchapter and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

(May 27, 1933, ch. 38, title III, § 328, as added Aug. 3, 1939, ch. 411, 53 Stat. 1177.)

Cross References

Investment Advisers Act of 1940, see section 80b-19 of this title.

Investment Company Act of 1940, see section 80a-50 of this title.

Public Utility Holding Company Act of 1935, see section 79z-6 of this title.

Securities Act of 1933, see section 77z of this title.

Securities Exchange Act of 1934, see section 78gg of this title.

CHAPTER 2B—SECURITIES EXCHANGES

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 77ccc, 77hhh, 77www, 77zzz, 78bbb, 79p, 79t, 79u, 80a-2, 80a-8, 80a-9, 80a-12, 80a-17, 80a-34, 80a-37, 80a-49, 80b-2, 80b-3, 80b-8, 1691c of this title; title 25 section 646; title 26 section 277; title 29 section 432; title 31 section 1052; title 43 section 1625.

Chapter Referred to in D.C. Code

This chapter is referred to in sections 2-2406, 2-2415, 28:8-102, 35-223, 35-1903 of the District of Columbia Code.

§ 78a. Short title

This chapter may be cited as the "Securities Exchange Act of 1934."

(June 6, 1934, ch. 404, title I, § 1, 48 Stat. 881.)

References in Text

This chapter in the original read, "This Act." The act was divided into two titles as follows: "Title I—Regulation of Securities Exchanges" and "Title II—Amendments to Securities Act of 1933." This section was section 1 of title I, which title is set out as sections 78a to 78d, 78e to 78*l*, 78m to 78*o*, and 78*o*-3 to 78hh of this title. Title II of the act amended or repealed sections 77b to 77e, 77j, 77k, 77m, 77*o*, and 77s, and added former sections 78ii and 78jj of this title. Although these latter provisions were set out as a separate title, they were part of the act; hence, they are technically a part of the "Securities Exchange Act of 1934".

Short Title of 1975 Amendment

Section 1 of Pub. L. 94-29, June 4, 1975, 89 Stat. 97, provided: "That this Act [enacting sections 78k-1, 78*o*-4, 78q-1, and 78kk of this title, amending sections 77d, 77x, 77yyy, 78b, 78c, 78d-1, 78f, 78h, 78k, 78*l*, 78m, 78*o*, 78*o*-3, 78q, 78s, 78u, 78w, 78x, 78y, 78bb, 78ee, 78ff, 78iii, 79z-3, 80a-9, 80a-10, 80a-13, 80a-15, 80a-16, 80a-18, 80a-31, 80a-35, 80a-48, 80b-3, 80b-4, and 80b-17 of this title, and enacting provisions set out as notes under this section and sections 78b and 78f of this title] may be cited as the 'Securities Acts Amendments of 1975'."

Short Title of 1964 Amendment

Section 1 of Pub. L. 88-467, Aug. 20, 1964, 78 Stat. 565, provided: "That this Act [which amended sections 77d, 78c, 78*l* to 78*o*, 78*o*-3, 78p, 78t, 78w, and 78ff of this title and enacted provisions set out as a note under section 78c of this title] may be cited as the 'Securities Acts Amendments of 1964'."

Cross References

Corporation of Foreign Bondholders Act, 1933, see section 77mm of this title.

Investment Advisers Act of 1940, see section 80b-20 of this title.

Investment Company Act of 1940, see section 80a-51 of this title.

Public Utility Holding Company Act of 1935, see section 79 of this title.

Securities Act of 1933, see section 77a of this title.

Securities Investor Protection Act of 1970, see section 78aaa et seq. of this title.

Trust Indenture Act of 1939, see section 77aaa of this title.

§ 78b. Necessity for regulation

For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, including transactions by officers, directors, and principal security holders, to require appropriate reports to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto, and to impose requirements necessary to make such regulation and control reasonably complete and effective, in order to protect interstate commerce, the national credit, the Federal taxing power, to protect and make more effective the national banking system and Federal Reserve System, and to insure the maintenance of fair and honest markets in such transactions:

(1) Such transactions (a) are carried on in large volume by the public generally and in large part originate outside the States in which the exchanges and over-the-counter markets are located and/or are effected by means of the mails and instrumentalities of interstate commerce; (b) constitute an important part of the current of interstate commerce; (c) involve in large part the securities of issuers engaged in interstate commerce; (d) involve the use of credit, directly affect the financing of trade, industry, and transportation in interstate commerce, and directly affect and influence the volume of interstate commerce; and affect the national credit.

(2) The prices established and offered in such transactions are generally disseminated and quoted throughout the United States and foreign countries and constitute a basis for determining and establishing the prices at which securities are bought and sold, the amount of certain taxes owing to the United States and to the several States by owners, buyers, and sellers of securities, and the value of collateral for bank loans.

(3) Frequently the prices of securities on such exchanges and markets are susceptible to manipulation and control, and the dissemination of such prices gives rise to excessive speculation, resulting in sudden and unreasonable fluctuations in the prices of securities which (a) cause alternately unreasonable expansion and unreasonable contraction of the volume of credit available for trade, transportation, and industry in interstate commerce, (b) hinder the proper appraisal of the value of securities and thus prevent a fair calculation of taxes owing to the United States and to the several States by owners, buyers, and sellers of securities, and (c) prevent the fair valuation of collateral for bank loans and/or obstruct the effective operation of the national banking system and Federal Reserve System.

(4) National emergencies, which produce widespread unemployment and the dislocation of trade, transportation, and industry, and which burden interstate commerce and adversely affect the general welfare, are precipitated, intensified, and prolonged by manipulation and sudden and unreasonable fluctuations of security prices and by excessive speculation on such exchanges and markets, and to meet such emergencies the Federal Government is put to such great expense as to burden the national credit.

(June 6, 1934, ch. 404, title I, § 2, 48 Stat. 881; June 4, 1975, Pub. L. 94-29, § 2, 89 Stat. 97.)

Amendments

1975—Pub. L. 94-29 inserted "to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto," following "require appropriate reports," in the introductory provisions preceding par. (1).

Effective Date of 1975 Amendment

Section 31(a) of Pub. L. 94-29 provided that: "This Act [enacting sections 78k-1, 78o-4, 78q-1, and 78kk of this title, amending this section and sections 77d, 77x, 77yyy, 78c, 78d-1, 78f, 78h, 78k, 78l, 78m, 78o, 78o-3, 78q, 78s, 78u, 78w, 78x, 78y, 78bb, 78ee, 78ff, 78iii, 79z-3, 80a-9, 80a-10, 80a-13, 80a-15, 80a-16, 80a-18, 80a-31, 80a-35, 80a-48, 80b-3, 80b-4, and 80b-17 of this title, and enacting provisions set out as notes under sections 78a and 78f of this title] shall become effective on the date of its enactment [June 4, 1975] except as hereinafter provided. The amendments made by this Act to sections 3(a)(12), 6(a) through (d), 11A(b), 15(a), 15A, 15B(a), 17A(b), and (c), and 19(g) of the Securities Exchange Act of 1934 [sections 78c(a)(12), 78f(a) through (d), 78k-1(b), 78o(a), 78o-3, 78o-4(a), 78q-1(b) and (c), and 78s(g) of this title] shall become effective one hundred eighty days after the date of enactment of this Act [June 4, 1975], and the amendments made by this Act to section 31 of the Securities Exchange Act of 1934 [section 78ee of this title] shall become effective on January 1, 1976. Neither the provisions of section 3(a)(3), 6(b)(2), or 6(c)(1) of the Securities Exchange Act of 1934 (as amended by this Act) [section 78c(a)(3), 78f(b)(2), or 78f(c)(1) of this title] nor any rule or regulation thereunder shall apply so as to deprive any person of membership in any national securities exchange (or its successor) of which such person was, on the date of enactment of this Act [June 4, 1975], a member or a member firm as defined in the constitution of such exchange or so as to deny membership in any such exchange (or its successor) to any natural person who is or becomes associated with such member or member firm."

Foreign Investment Study

Pub. L. 93-479, §§1 to 11, Oct. 26, 1974, 88 Stat. 1450 to 1454, authorized and directed the Secretary of the Treasury and the Secretary of Commerce to conduct a comprehensive, overall study of foreign direct and portfolio investments in the United States. The Secretary of Commerce and the Secretary of the Treasury were directed to submit to the Congress an interim report twelve months after Oct. 26, 1974, and not later than one and one-half years after Oct. 26, 1974, a full and complete report of the findings made under the study authorized, together with such recommendations as they considered appropriate.

Cross References

Findings and declaration of policy under Investment Company Act of 1940, see section 80a-1 of this title.

Findings under Investment Advisers Act of 1940, see section 80b-1 of this title.

Necessity for—

- Control of holding companies, see section 79a of this title.
- Regulation under Trust Indenture Act of 1939, see section 77bbb of this title.

§78c. Definitions and application

(a) Definitions

When used in this chapter, unless the context otherwise requires—

(1) The term "exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

(2) The term "facility" when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.

(3)(A) The term "member" when used with respect to a national securities exchange means (i) any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, (ii) any registered broker or dealer with which such a natural person is associated, (iii) any registered broker or dealer permitted to designate as a representative such a natural person, and (iv) any other registered broker or dealer which agrees to be regulated by such exchange and with respect to which the exchange undertakes to enforce compliance with the provisions of this chapter, the rules and regulations thereunder, and its own rules. For purposes of sections 78f(b)(1), 78f(b)(4), 78f(b)(6), 78f(b)(7), 78f(d), 78q(d), 78s(d), 78s(e), 78s(g), 78s(h), and 78u of this title, the term "member" when used with respect to a national securities exchange also means, to the extent of the rules of the exchange specified by the Commission, any person required by the Commission to comply with such rules pursuant to section 78f(f) of this title.

(B) The term "member" when used with respect to a registered securities association means any broker or dealer who agrees to be regulated by such association and with respect to whom the association undertakes to enforce compliance with the provisions of this chapter, the rules and regulations thereunder, and its own rules.

(4) The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.

(5) The term "dealer" means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.

(6) The term "bank" means (A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving de-

posits or exercising fiduciary powers similar to those permitted to national banks under section 11(k) of the Federal Reserve Act, as amended, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this chapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(7) The term "director" means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.

(8) The term "issuer" means any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is, or is to be, used.

(9) The term "person" means a natural person, company, government, or political subdivision, agency, or instrumentality of a government.

(10) The term "security" means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit, for a security, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

(11) The term "equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(12) The term "exempted security" or "exempted securities" includes securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States; such securities issued or guaranteed by corporations in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury as necessary or appropriate in the public interest or for the protection of investors; municipal securities, as defined in paragraph (29) of this subsection: *Provided, however,* That municipal securities shall not be deemed to be "exempted securities" for purposes of sections 78*o*, 78*o*-3 (except subsections (b)(6), (b)(11), and (g)(2) thereof), and 78q-1 of this title; any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian; any interest or participation in a collective trust fund maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26, or (B) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of title 26, other than any plan described in clause (A) or (B) of this paragraph which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of title 26, and such other securities (which may include, among others, unregistered securities, the market in which is predominantly intrastate) as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this chapter which by their terms do not apply to an "exempted security" or to "exempted securities".

(13) The terms "buy" and "purchase" each include any contract to buy, purchase, or otherwise acquire.

(14) The terms "sale" and "sell" each include any contract to sell or otherwise dispose of.

(15) The term "Commission" means the Securities and Exchange Commission established by section 78d of this title.

(16) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Canal Zone, the Virgin Islands, or any other possession of the United States.

(17) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof. The term also includes intrastate use of (A) any facility of a national securities exchange or of a telephone or other interstate means of communication, or (B) any other interstate instrumentality.

(18) The term "person associated with a broker or dealer" or "associated person of a broker or dealer" means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 78o(b) of this title (other than paragraph (6) thereof).

(19) The terms "investment company", "affiliated person", "insurance company", "separate account", and "company" have the same meanings as in the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.].

(20) The terms "investment adviser" and "underwriter" have the same meanings as in the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.].

(21) The term "person associated with a member" or "associated person of a member" when used with respect to a member of a national securities exchange or registered securities association means any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member.

(22)(A) The term "securities information processor" means any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security (other than an exempted security) or (ii) distributing or publishing (whether by means of a ticker tape, a communications network, a terminal display device, or otherwise) on a current and continuing basis, information with respect to such transactions or quotations. The term "securities information processor" does not include any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, any self-regulatory organizations, any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank, if such bank, broker, dealer, association, or cooperative bank would be deemed to be a securities information processor solely by reason of functions performed by such institutions as part of customary banking, brokerage, dealing, association, or cooperative bank activities, or any common carrier, as defined in section 153(h) of title 47, subject to the jurisdiction of the Federal Communications Commission or a State commission, as defined in section 153(t) of title 47, unless the Commission determines that such carrier is engaged in the business of collecting, processing, or preparing for distribution or publication, information with respect to transactions in or quotations for any security.

(B) The term "exclusive processor" means any securities information processor or self-regulatory organization which, directly or indirectly, engages on an exclusive basis on behalf of any national securities exchange or registered securities association [1] or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf [1] in collecting, processing, or preparing for distribution or publication any information with respect to (i) transactions or quotations on or effected or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic system operated or controlled by such association.

(23)(A) The term "clearing agency" means any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. Such term also means any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.

(B) The term "clearing agency" does not include (i) any Federal Reserve bank, Federal home loan bank, or Federal land bank; (ii) any national securities exchange or registered securities association solely by reason of its providing facilities for comparison of data respecting the terms of settlement of securities transactions effected on such exchange or by means of any electronic system operated or controlled by such association; (iii) any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank if such bank, broker, dealer, association, or cooperative bank would be deemed to be a clearing agency solely by reason of functions performed by such institution as part of customary banking, brokerage, dealing, association, or cooperative banking activities, or solely by reason of acting on behalf of a clearing agency or a participant therein in connection with the furnishing by the clearing agency of services to its participants or the use of services of the clearing agency by its participants, unless the Commission, by rule, otherwise provides as necessary or appropriate to assure the prompt and accurate clearance and settlement of securities transactions or to prevent evasion of this chapter; (iv) any life insurance company, its registered separate accounts, or a subsidiary of such insurance company solely by reason of functions commonly performed by such entities in connection with variable annuity contracts or variable life policies issued by such insurance company or its separate accounts; (v) any registered open-end investment company or unit investment trust solely by reason of functions commonly performed by it in connection with shares in such registered open-end investment company or unit investment trust, or (vi) any person solely by reason of its performing functions described in paragraph (25)(E) of this subsection.

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[1] So in original, probably should be followed by a comma.

(24) The term "participant" when used with respect to a clearing agency means any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities. Such term does not include a person whose only use of a clearing agency is (A) through another person who is a participant or (B) as a pledgee of securities.

(25) The term "transfer agent" means any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates. The term "transfer agent" does not include any insurance company or separate account which performs such functions solely with respect to variable annuity contracts or variable life policies which it issues or any registered clearing agency which performs such functions solely with respect to options contracts which it issues.

(26) The term "self-regulatory organization" means any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of sections 78s(b), 78s(c), and 78w(b) of this title) the Municipal Securities Rulemaking Board established by section 78*o*-4 of this title.

(27) The term "rules of an exchange", "rules of an association", or "rules of a clearing agency" means the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of an exchange, association of brokers and dealers, or clearing agency, respectively, and such of the stated policies, practices, and interpretations of such exchange, association, or clearing agency as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange, association, or clearing agency.

(28) The term "rules of a self-regulatory organization" means the rules of an exchange which is a national securities exchange, the rules of an association of brokers and dealers which is a registered securities association, the rules of a clearing agency which is a registered clearing agency, or the rules of the Municipal Securities Rulemaking Board.

(29) The term "municipal securities" means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in section 103(c)(2) of title 26) the interest on which is excludable from gross income under section 103(a)(1) of title 26 if, by reason of the application of paragraph (4) or (6) of section 103(c) of title 26 (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security.

(30) The term "municipal securities dealer" means any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for his own account, through a broker or otherwise, but does not include—

(A) any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business; or

(B) a bank, unless the bank is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, through a broker or otherwise: *Provided, however,* That if the bank is engaged in such business through a separately identifiable department or division (as defined by the Municipal Securities Rulemaking Board in accordance with section 78*o*-4(b)(2)(H) of this title), the department or division and not the bank itself shall be deemed to be the municipal securities dealer.

(31) The term "municipal securities broker" means a broker engaged in the business of effecting transactions in municipal securities for the account of others.

(32) The term "person associated with a municipal securities dealer" when used with respect to a municipal securities dealer which is a bank or a division or department of a bank means any person directly engaged in the management, direction, supervision, or performance of any of the municipal securities dealer's activities with respect to municipal securities, and any person directly or indirectly controlling such activities or controlled by the municipal securities dealer in connection with such activities.

(33) The term "municipal securities investment portfolio" means all municipal securities held for investment and not for sale as part of a regular business by a municipal securities dealer or by a person, directly or indirectly, controlling, controlled by, or under common control with a municipal securities dealer.

(34) The term "appropriate regulatory agency" means—

(A) When used with respect to a municipal securities dealer:

(i) the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the

District of Columbia, or a subsidiary or a department or division of any such bank;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary or a department or division thereof, a bank holding company, a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a subsidiary or a department or division of such subsidiary;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), or a subsidiary or department or division thereof; and

(iv) the Commission in the case of all other municipal securities dealers.

(B) When used with respect to a clearing agency or transfer agent:

(i) the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia, or a subsidiary of any such bank;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary thereof, a bank holding company, or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i) or (iii) of this subparagraph;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), or a subsidiary thereof; and

(iv) the Commission in the case of all other clearing agencies and transfer agents.

(C) When used with respect to a participant or applicant to become a participant in a clearing agency or a person requesting or having access to services offered by a clearing agency:

(i) The Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia when the appropriate regulatory agency for such clearing agency is not the Commission;

(ii) the Board of Governors of the Federal Reserve System in the case of a state member bank of the Federal Reserve System, a bank holding company, or a subsidiary of a bank holding company, or a subsidiary of a bank holding company [1] which is a bank other than a bank specified in clause (i) or (iii) of this subparagraph when the appropriate regulatory agency for such clearing agency is not the Commission;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) when the appropriate regulatory agency for such clearing agency is not the Commission; and

(iv) the Commission in all other cases.

(D) When used with respect to an institutional investment manager which is a bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.]:

(i) the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia;

(ii) the Board of Governors of the Federal Reserve System, in the case of any other member bank of the Federal Reserve System; and

(iii) the Federal Deposit Insurance Corporation, in the case of any other insured bank.

(E) When used with respect to a national securities exchange or registered securities association, member thereof, person associated with a member thereof, applicant to become a member thereof or to become associated with a member thereof, or person requesting or having access to services offered by such exchange or association or member thereof, or the Municipal Securities Rulemaking Board, the Commission.

(F) When used with respect to a person exercising investment discretion with respect to an account;

(i) the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia;

(ii) the Board of Governors of the Federal Reserve System in the case of any other member bank of the Federal Reserve System;

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.]; and

(iv) the Commission in the case of all other such persons.

As used in this paragraph, the terms "bank holding company" and "subsidiary of a bank holding company" have the meanings given them in section 1841 of title 12.

(35) A person exercises "investment discretion" with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this chapter and the rules and regulations thereunder.

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[1] So in original.

(36) A class of persons or markets is subject to "equal regulation" if no member of the class has a competitive advantage over any other member thereof resulting from a disparity in their regulation under this chapter which the Commission determines is unfair and not necessary or appropriate in furtherance of the purposes of this chapter.

(37) The term "records" means accounts, correspondence, memorandums, tapes, discs, papers, books, and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

(38) The term "market maker" means any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

(39) A person is subject to a "statutory disqualification" with respect to membership or participation in, or association with a member of, a self-regulatory organization, if such person—

(A) has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization;

(B) is subject to an order of the Commission denying, suspending for a period not exceeding twelve months, revoking his registration as a broker, dealer, or municipal securities dealer, or barring his being associated with a broker, dealer, or municipal securities dealer;

(C) by his conduct while associated with a broker, dealer, or municipal securities dealer, has been found to be a cause of any effective suspension, expulsion, or order of the character described in subparagraph (A) or (B) of this paragraph, and in entering such a suspension, expulsion, or order, the Commission or any such self-regulatory organization shall have jurisdiction to find whether or not any person was a cause thereof;

(D) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person described by subparagraph (A), (B), or (C) of this paragraph; or

(E) has committed or omitted any act enumerated in subparagraph (D) or (E) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the date of the filing of an application for membership or participation in, or to become associated with a member of, such self-regulatory organization, is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4), has willfully made or caused to be made in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, report required to be filed with a self-regulatory organization, or proceeding before a self-regulatory organization, any statement which was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein.

(b) Power to define technical, trade, accounting, and other terms

The Commission and the Board of Governors of the Federal Reserve System, as to matters within their respective jurisdictions, shall have power by rules and regulations to define technical, trade, accounting, and other terms used in this chapter, consistently with the provisions and purposes of this chapter.

(c) Application to governmental departments or agencies

No provision of this chapter shall apply to, or be deemed to include, any executive department or independent establishment of the United States, or any lending agency which is wholly owned, directly or indirectly, by the United States, or any officer, agent, or employee of any such department, establishment, or agency, acting in the course of his official duty as such, unless such provision makes specific reference to such department, establishment, or agency.

(d) Issuers of municipal securities

No issuer of municipal securities or officer or employee thereof acting in the course of his official duties as such shall be deemed to be a "broker", "dealer", or "municipal securities dealer" solely by reason of buying, selling, or effecting transactions in the issuer's securities.

(June 6, 1934, ch. 404, title I, § 3, 48 Stat. 882; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704; Proc. No 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; June 25, 1959, Pub. L. 86-70, § 12(b), 73 Stat. 143; July 12, 1960, Pub. L. 86-624, § 7(b), 74 Stat. 412; Aug. 20, 1964, Pub. L. 88-467, § 2, 78 Stat. 565; Aug. 10, 1970, Pub. L. 91-373, title IV, § 401(b), 84 Stat. 718; Dec. 14, 1970, Pub. L. 91-547, § 28(a), (b), 84 Stat. 1435; Dec. 22, 1970, Pub. L. 91-567, § 6(b), 84 Stat. 1499; June 4, 1975, Pub. L. 94-29, § 3, 89 Stat. 97.)

REFERENCES IN TEXT

Section 11(k) of the Federal Reserve Act, as amended, referred to in subsec. (a)(6), which involved the power of the Board of Governors of the Federal Reserve System to allow national banks to act as fiduciaries in certain matters, and which was classified to a former subsec. (k) of section 248 of title 12, was repealed by section 3 of Pub. L. 87-722, Sept. 28, 1962, 76 Stat. 670, section 1 of which granted similar powers to the Comptroller of the Currency, and is classified to section 92a of Title 12, Banks and Banking.

This chapter referred to in subsecs. (a), (b) and (c) in the original read "this title". See Reference in Text note under section 78a of this title.

The Investment Company Act of 1940, referred to in subsec. (a)(19), is title I of act Aug. 20, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§ 80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables volume.

The Investment Advisers Act of 1940, referred to in subsec. (a)(20), is title II of act Aug. 20, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§ 80b-1 et seq.) of chapter 2D of this title.

For complete classification of this Act to the Code, see section 80b-20 of this title and Tables volume.

The Federal Deposit Insurance Act, referred to in subsec. (a)(34)(D), (F)(iii), is classified to chapter 16 (§ 1811 et seq.) of Title 12, Banks and Banking.

Codification

Words "Phillippine Islands" were deleted from definition of term "State" in subsec. (a)(16) under authority of Proc. No. 2695, which granted independence to the Philippine Islands. Proc. No. 2695 was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and is set out as a note under that section.

Amendments

1975—Subsec. (a)(3). Pub. L. 94-29, § 3(1), redefined the term "member" to recognize the elimination of fixed commission rates in the case of exchanges, added a definition of the term when used in the case of registered securities associations, expanded the definition of the term when used with respect to an exchange to include any natural person permitted to effect transactions on the floor of an exchange without the services of another person acting as broker, any registered broker or dealer with which such natural person is associated, any registered broker or dealer permitted to designate a natural person as its representative on the floor of an exchange, and any other registered broker or dealer which agrees to be regulated by an exchange and with respect to whom the exchange has undertaken to enforce compliance with its rules, this chapter, and the rules and regulations thereunder, introduced the concept of including among members any person required to comply with the rules of an exchange to the extent specified by the Commission in accordance with section 78f(f) of this title, and expanded the definition of the term when used with respect to a registered securities association to include any broker or dealer who has agreed to be regulated and with respect to whom the association undertakes to enforce compliance with its own rules, this chapter, and the rules and regulations thereunder.

Subsec. (a)(9). Pub. L. 94-29, § 3(2), substituted "a natural person, company, government, or political subdivision, agency, or instrumentality of a government" for "an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization".

Subsec. (a)(12). Pub. L. 94-29, § 3(3), brought brokers and dealers engaged exclusively in municipal securities business within the registration provisions of this chapter by transferring the existing description of municipal securities to subsec. (a)(29) and by inserting in its place provisions revoking the exempt status of municipal securities for purposes of sections 78o, 78o-3 (except subsections (b)(6), (b)(11), and (g)(2) thereof) and 78q-1 of this title.

Subsec. (a)(17). Pub. L. 94-29, § 3(4), expanded the definition of "interstate commerce" to establish that the intrastate use of any facility of an exchange, any telephones or other interstate means of communication, or any other interstate instrumentality constitutes a use of the jurisdictional means for purposes of this chapter.

Subsec. (a)(18). Pub. L. 94-29, § 3(4), expanded the definition to include persons under common control with the broker or dealer and deleted references to the classification of the persons, including employees, controlled by a broker or a dealer.

Subsec. (a)(19). Pub. L. 94-29, § 3(4), substituted " 'separate account', and 'company' " for "and 'separate account'."

Subsec. (a)(21). Pub. L. 94-29, § 3(5), broadened the definition of the term "person associated with a member" to encompass a person associated with a broker or dealer which is a member of an exchange by restating directly the definition of a "person associated with a broker or dealer" in subsec. (a)(18).

Subsecs. (a)(22) to (39). Pub. L. 94-29, § 3(6), added pars. (22) to (39).

Subsec. (b). Pub. L. 94-29, § 3(7), substituted "accounting, and other terms used in this chapter, consistently with the provisions and purposes of this chapter" for "and accounting terms used in this chapter insofar as such definitions are not inconsistent with the provisions of this chapter".

Subsec. (d). Pub. L. 94-29, § 3(8), added subsec. (d).

1970—Subsec. (a)(12). Pub. L. 91-567 added provisions which brought within the definition of "exempted security" any security which is an industrial development bond the interest on which is excludable from gross income under section 103(a)(1) of title 26 if, by reason of the application of section 103(c) (4) or (6) of title 26, section 103(c)(1) does not apply to such security. Such amendment was also made by Pub. L. 91-373.

Pub. L. 91-547, § 28(a), deleted following security of "any municipal corporate instrumentality of one or more states" reference to industrial development bonds the interest on which is excludable from gross income under section 103(a)(1) of title 26; and included as exempted securities interests or participations in common trust funds maintained by a bank for collective investment of assets held by it in a fiduciary capacity; interests or participations in bank collective trust funds maintained for funding of employees' stock-bonus, pension, or profit-sharing plans; interests or participations in separate accounts maintained by insurance companies for funding certain stock-bonus, pension, or profit-sharing plans which meet the requirements for qualification under section 401 of title 26; and such other securities as the Commission by rules and regulations deems necessary in the public interest.

Pub. L. 91-373 added provisions which brought within the definition of "exempted security" any security which is an industrial development bond the interest on which is excludable from gross income under section 103(a)(1) of title 26 if, by reason of the application of section 103(c)(4) or (6) of title 26, section 103(c)(1) does not apply to such security. Such amendment was also made by Pub. L. 91-567.

Subsec. (a)(19). Pub. L. 91-547, § 28(b), provided for term "separate account" the same meaning as in the Investment Company Act of 1940.

1964—Subsecs. (a)(18) to (21). Pub. L. 88-467 added pars. (18) to (21).

1960—Subsec. (a)(16). Pub. L. 86-624 eliminated "Hawaii," preceding "Puerto Rico".

1959—Subsec. (a)(16). Pub. L. 86-70 eliminated "Alaska," preceding "Hawaii".

Change of Name

Act Aug. 23, 1935, substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

Effective Date of 1975 Amendment

Amendment by Pub. L. 94-29 effective on June 4, 1975, except for amendment of subsec. (a)(12) by Pub. L. 94-29 to be effective 180 days after June 4, 1975, with provisions of subsec. (a)(3), as amended by Pub. L. 94-29, or rules or regulations thereunder, not to apply in a way so as to deprive any person of membership in any national securities exchange (or its successor) of which such person was, on June 4, 1975, a member or a member firm as defined in the constitution of such exchange, or so as to deny membership in any such exchange (or its successor) to any natural person who is or becomes associated with such member or member firm, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

Effective Date of 1970 Amendments

For effective date of amendment by Pub. L. 91-567, see section 6(d) of Pub. L. 91-567, set out as a note under section 77c of this title.

Amendment of subsecs. (a)(12) and (19) of this section by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub L. 91-547, set out as a note under section 80a-52 of this title.

For effective date of amendment by Pub. L. 91-373, see section 401(c) of Pub. L. 91-373, set out as a note under section 77c of this title.

Effective Date of 1964 Amendment

Section 13 of Pub. L. 88-467 provided that:

"The amendments made by this Act [Pub. L. 88-467] shall take effect as follows:

"(1) The effective date of section 12(g)(1) of the Securities Exchange Act of 1934, as added by section 3(c) of this Act [section 78*l*(g)(1) of this title], shall be July 1, 1964.

"(2) The effective date of the amendments to sections 12(b) and 15(a) of the Securities Exchange Act of 1934, contained in sections 3(a) and 6(a), respectively, of this Act [sections 78*l*(b)(1)(I) to (L),(3) and 78*o*(a) of this title] shall be July 1, 1964.

"(3) All other amendments contained in this Act [to sections 77d, 78c, 78*l*(f),(g)(2) to (5), (h), (i), 78m, 78n, 78*o*(b), (c)(4), (5), (d), 78*o*-3, 78p, 78t, 78w, and 78ff of this title] shall take effect on the date of its enactment [Aug. 20, 1964]."

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Applicability to United States, States, or their governmental agencies of—
  Investment Advisers Act of 1940, see section 80b-2 of this title.
  Investment Company Act of 1940, see section 80a-2 of this title.
  Public Utility Holding Company Act of 1935, see section 79b of this title.

Bretton Woods Agreement Act, exempted securities under, see sections 286k-1 and 286k-2 of Title 22, Foreign Relations and Intercourse.

Definition of terms—
  Dealer, issuer, person, security, and sale and sell under Securities Act of 1933, see section 77b of this title.
  Director, and sale and sell, under Trust Indenture Act of 1939, see section 77ccc of this title.
  Director, person, security, buy and purchase, and sale and sell under Public Utility Holding Company Act of 1935, see section 79b of this title.
  Exchange, broker, dealer, bank, director, issuer, person, security, sale and sell, investment company, affiliated person, and insurance company under Investment Company Act of 1940, see section 80a-2 of this title.
  Exchange, broker, dealer, bank, director, person, security, investment adviser, and underwriter under Investment Advisers Act of 1940, see section 80b-2 of this title.
  Fraudulent, deceptive, or manipulative acts and practices, devices and contrivances, power of Commission to define, see section 78*o* of this title.
  Investment adviser, see section 80b-2 of this title.
  Nonmember broker or dealer, see section 78*o*-3 of this title.
  Put, call, straddle, option, or privilege not to include, registered warrant, right, or convertible security, see section 78i of this title.

Exempted securities manipulation of security prices as inapplicable to, see section 78i of this title.

Exempted securities under—
  Securities Act of 1933, see section 77c of this title.
  Trust Indenture Act of 1939, see section 77ddd of this title.

Inter-American Development Bank Act, exempted securities under, see section 283h of Title 22, Foreign Relations and Intercourse.

Power to define technical, trade, and accounting terms under—
  Investment Company Act of 1940, see section 80a-37 of this title.
  Public Utility Holding Company Act of 1935, see section 79t of this title.
  Securities Act of 1933, see section 77s of this title.
  Trust Indenture Act of 1939, see section 77sss of this title.

Rules and regulations, power of Commission and Board of Governors of Federal Reserve System to make, see section 78w of this title.

Section Referred to in Other Sections

This section is referred to in sections 78m, 78*o*-4, 78q, 78w, 78y, 78ccc, 78fff, 80b-2, 80b-4 of this title; title 12 section 2290; title 22 sections 283h, 285h, 286k-1; title 25 section 646; title 26 section 7609.

§ 78d. Securities and Exchange Commission

(a) There is hereby established a Securities and Exchange Commission (hereinafter referred to as the "Commission") to be composed of five commissioners to be appointed by the President by and with the advice and consent of the Senate. Not more than three of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this chapter. Each commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the commissioners first taking office after June 6, 1934, shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years, after June 6, 1934.

(b) The Commission is authorized to appoint and fix the compensation of such officers, attorneys, examiners, and other experts as may be necessary for carrying out its functions under this chapter, and the Commission may, subject to the civil-service laws, appoint such other officers and employees as are necessary in the execution of its functions and fix their salaries in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(June 6, 1934, ch. 404, title I, § 4, 48 Stat. 885; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; July 12, 1960, Pub. L. 86-619, § 3, 74 Stat. 408; Sept. 13, 1960, Pub. L. 86-771, 74 Stat. 913; Aug. 14, 1964, Pub. L. 88-426, title III, § 305(20), 78 Stat. 425.)

References in Text

This chapter, referred to in subsecs. (a) and (b), in the original read "this title" and "this Act", respectively. See Reference in Text note set out under section 78a of this title.

The civil service laws, referred to in subsec. (b), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

Codification

In subsec. (b), provisions that authorized the Commission to appoint and fix the compensation of such officers, attorneys, examiners, and other experts as may be necessary for carrying out its functions under this chapter "without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States" were omitted as obsolete and superseded.

Such appointments are now subject to the civil service laws unless specifically excepted by those laws or by laws enacted subsequent to Executive Order No. 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5, Government Organization and Employees.

As to the compensation of such personnel, sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed Pub. L. 89-554, Sept. 6, 1966, § 8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5. Section 5102 of Title 5 now contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Civil Service Commission to determine the applicability to specific positions and employees.

"Chapter 51 and subchapter III of chapter 53 of title 5" were substituted for "the Classification Act of 1949, as amended" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

Amendments

1964—Subsec. (a). Pub. L. 88-426 repealed provisions which prescribed the compensation of the Chairman and the Commissioners.

1960—Subsec. (a). Pub. L. 86-771 authorized the chairman to receive an additional $500 a year.

Pub. L. 86-619 increased the salary of each commissioner from $15,000 to $20,000 a year, and provided for continuation in office of a commissioner upon termination of his term until a successor is appointed and has qualified, not beyond expiration of next session of Congress subsequent to the expiration of said fixed term of office.

1949—Subsec. (b). Act Oct. 28, 1949, struck out "Classification Act of 1923, as amended" and inserted in lieu thereof "Classification Act of 1949".

Effective Date of 1964 Amendment

For effective date of amendment by Pub. L. 88-426, see section 501 of Pub. L. 88-426.

Repeals

Act Oct. 28, 1949, ch. 782, § 1106(a), 63 Stat. 972, set out in the credit of this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

Emergency Preparedness Functions

For assignment of certain emergency preparedness functions to the Securities and Exchange Commission, see Parts 1, 25, and 30 of Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, set out as a note under section 2292 of Title 50, Appendix, War and National Defense.

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out below.

Compensation of Chairman and Commissioners

Compensation of Chairman and Commissioners, see sections 5314 and 5315 of Title 5, Government Organization and Employees.

Cross References

Appointment and compensation of—
- Officers, attorneys, examiners, etc., by Securities and Exchange Commission for carrying out its functions under Bankruptcy Act, see section 665 of Title 11, Bankruptcy.
- Officers, etc., under Investment Advisers Act of 1940, see section 80b-18 of this title.
- Officers, etc., under Investment Company Act of 1940, see section 80a-45 of this title.
- Officers, etc., under Public Utility Holding Company Act of 1935, see section 79z-5 of this title.
- Officers, etc., under Trust Indenture Act of 1939, see section 77uuu of this title.

Commission, definition of, see section 78c of this title.

Independence of financial regulatory agencies with respect to submission of views to Congress, see section 250 of Title 12, Banks and Banking.

Jurisdiction of Commission unaffected by Trust Indenture Act of 1939, see section 77zzz of this title.

Reorganization of corporations—
- Alteration or modification of plan, submission to Commission, see section 622 of Title 11, Bankruptcy.
- Appearance and participation in proceedings, see section 608 of Title 11.
- Approval of plan by court after submission, see sections 573, 574, of Title 11.
- Compensation and allowance, hearing on application, see section 647 of Title 11.
- Compensation and costs and expenses not to be allowed, see section 642 of Title 11.
- Confirmation of plan, notice of, see section 579 of Title 11.
- Form of reports and summaries by trustees and debtors in possession, see section 590 of Title 11.
- Notices, see section 665 of Title 11.
- Papers and records in proceedings, transmission of copies to Commission, see section 665 of Title 11.
- Petition, notice of hearing on, see section 561 of Title 11.
- Submission by trustee of statement of investigation of property, liabilities and financial condition of debtor, see section 567 of Title 11.
- Submission of information, including Commission's report or summary thereof, to creditors and stockholders after approval, see section 575 of Title 11.
- Submission of plan for examination and report, see section 572 of Title 11.
- Time for hearing on proposed plan, see section 571 of Title 11.

1950 REORGANIZATION PLAN NO. 10

15 F.R. 3175, 64 Stat. 1265

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [See section 901 et seq. of Title 5, Government Organization and Employees].

Securities and Exchange Commission

§ 1. Transfer of Functions to the Chairman

(a) Subject to the provisions of subsection (b) of this section there are hereby transferred from the Securities and Exchange Commission, hereinafter referred to as the Commission, to the Chairman of the Commission, hereinafter referred to as the Chairman, the executive and administrative functions of the Commission, including functions of the Commission with respect to (1) the appointment and supervision of personnel employed under the Commission, (2) the distribution of business among such personnel and among administrative units of the Commission, and (3) the use and expenditure of funds.

(b)(1) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(2) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(3) Personnel employed regularly and full time in the immediate offices of Commissioners other than the Chairman shall not be affected by the provisions of this reorganization plan.

(4) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

§ 2. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Chairman may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any function transferred to the Chairman by the provisions of section 1 of this reorganization plan.

§ 3. DESIGNATION OF CHAIRMAN

The functions of the Commission with respect to choosing a Chairman from among the Commissioners composing the Commission are hereby transferred to the President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77uuu, 78c of this title; title 11 section 665.

§ 78d-1. Delegation of functions by Commission

(a) Authorization; functions delegable; eligible persons; application of other laws

In addition to its existing authority, the Securities and Exchange Commission, hereinafter referred to as the "Commission", shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter: *Provided, however,* That nothing herein contained shall be deemed to supersede the provisions of section 556(b) of title 5: *And provided further,* That nothing herein contained shall be deemed to authorize the delegation of the function of rulemaking as defined in subchapter II of chapter 5 of title 5, with reference to general rules as distinguished from rules of particular applicability, or of the making of any rule pursuant to section 78s(c) of this title.

(b) Right of review; procedure

With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, hearing examiner, employee, or employee board, upon its own initiative or upon petition of a party to or intervenor in such action, within such time and in such manner as the Commission, by rule, shall prescribe: *Provided, however,* That the vote of one member of the Commission shall be sufficient to bring any such action before the Commission for review: *And provided further,* That a person or party shall be entitled to review by the Commission if he or it is adversely affected by action at a delegated level which (1) denies any request for action pursuant to section 77h(a) or section 77h(c) of this title or the first sentence of section 78*l*(d) of this title; (2) suspends trading in a security pursuant to section 78*l*(k) of this title; or (3) is pursuant to any provision of this chapter in a case of adjudication, as defined in section 551 of title 5, not required by this chapter to be determined on the record after notice and opportunity for hearing (except to the extent there is involved a matter described in section 554(a)(1) through (6) of title 5).

(c) Finality of delegated action

Should the right to exercise such review be declined, or should no such review be sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, individual Commissioner, hearing examiner, employee, or employee board, shall, for all purposes, including appeal or review thereof, be deemed the action of the Commission.

(Pub. L. 87-592, § 1, Aug. 20, 1962, 76 Stat. 394; Pub. L. 94-29, § 25, June 4, 1975, 89 Stat. 163.)

CODIFICATION

Section is not part of the Securities Exchange Act of 1934 which comprises this chapter.

"Section 556(b) of title 5" was substituted for "section 7a of the Administrative Procedure Act of 1946", and "subchapter II of chapter 5 of title 5" was substituted for "the Administrative Procedure Act of 1946, as amended" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1975—Subsec. (a). Pub. L. 94-29, § 25(1), substituted "any rule pursuant to section 78s(c) of this title" for "any rule, regulation, or order pursuant to section 78s(b) of this title".

Subsec. (b). Pub. L. 94-29, § 25(2), added provisions which entitle any person adversely affected by the action of the staff of the Commission, acting pursuant to delegated authority in any case of informal adjudication, to have such action reviewed by the full Commission.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

CROSS REFERENCES

Transfer of functions to chairman in respect to assignment of personnel, see section 78d-2 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78d-2 of this title.

§ 78d-2. Transfer of functions with respect to assignment of personnel to chairman

In addition to the functions transferred by the provisions of Reorganization Plan Numbered 10 of 1950 (64 Stat. 1265), there are transferred from the Commission to the Chairman of the Commission the functions of the Commission with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to Commission personnel, including Commissioners, pursuant to section 78d-1 of this title.

(Pub. L. 87-592, § 2, Aug. 20, 1962, 76 Stat. 395.)

REFERENCES IN TEXT

Reorganization Plan Numbered 10 of 1950 (64 Stat. 1265), referred to in the text, is set out as a note under section 78d of this title.

CODIFICATION

Section is not part of the Securities Exchange Act of 1934 which comprises this chapter.

§ 78e. Transactions on unregistered exchanges

It shall be unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange within or subject to the jurisdiction of the United States to effect any transaction in a security, or to report any such transaction, unless such exchange (1) is registered as national securities exchange under section 78f of this title, or (2) is exempted from such registration upon application by the exchange because, in the opinion of the Commission, by reason of the limited volume of transactions effected on such exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require such registration.

(June 6, 1934, ch. 404, title I, § 5, 48 Stat. 885.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Effective date, see section 78hh of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78o, 78o-4, 78p, 78hh of this title.

§ 78f. National securities exchanges

(a) Registration; application

An exchange may be registered as a national securities exchange under the terms and conditions hereinafter provided in this section and in accordance with the provisions of section 78s(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) Determination by Commission requisite to registration of applicant as a national securities exchange

An exchange shall not be registered as a national securities exchange unless the Commission determines that—

(1) Such exchange is so organized and has the capacity to be able to carry out the purposes of this chapter and to comply, and (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of this chapter, the rules and regulations thereunder, and the rules of the exchange.

(2) Subject to the provisions of subsection (c) of this section, the rules of the exchange provide that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of such exchange and any person may become associated with a member thereof.

(3) The rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

(4) The rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

(5) The rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the exchange.

(6) The rules of the exchange provide that (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of the provisions of this chapter, the rules or regulations thereunder, or the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

(7) The rules of the exchange are in accordance with the provisions of subsection (d) of this section, and in general, provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person

from becoming associated with a member thereof, and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof.

(8) The rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(c) Denial of membership in national exchanges; denial of association with member; conditions; limitation of membership

(1) A national securities exchange shall deny membership to (A) any person, other than a natural person, which is not a registered broker or dealer or (B) any natural person who is not, or is not associated with, a registered broker or dealer.

(2) A national securities exchange may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection[1] shall, deny membership to any registered broker or dealer or natural person associated with a registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification. A national securities exchange shall file notice with the Commission not less than thirty days prior to admitting any person to membership or permitting any person to become associated with a member, if the exchange knew, or in the exercise of reasonable care should have known, that such person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3)(A) A national securities exchange may deny membership to, or condition the membership of, a registered broker or dealer if (i) such broker or dealer does not meet such standards of financial responsibility or operational capability or such broker or dealer or any natural person association[2] with such broker or dealer does not meet such standards of training, experience, and competence as are prescribed by the rules of the exchange or (ii) such broker or dealer or person associated with such broker or dealer has engaged and there is a reasonable likelihood he may again engage in acts or practices inconsistent with just and equitable principles of trade. A national securities exchange may examine and verify the qualifications of an applicant to become a member and the natural persons associated with such an applicant in accordance with procedures established by the rules of the exchange.

(B) A national securities exchange may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or association of a natural person with a member, if such natural person (i) does not meet such standards of training, experience, and competence as are prescribed by the rules of the exchange or (ii) has engaged and there is a reasonable likelihood he may again engage in acts or practices inconsistent with just and equitable principles of trade. A national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

(C) A national securities exchange may bar any person from becoming associated with a member if such person does not agree (i) to supply the exchange with such information with respect to its relationship and dealings with the member as may be specified in the rules of the exchange and (ii) to permit the examination of its books and records to verify the accuracy of any information so supplied.

(4) A national securities exchange may (A) limit the number of members of the exchange and (B) the number of members and designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker: *Provided, however,* That no national securities exchange shall have the authority to decrease the number of memberships in such exchange, or the number of members and designated representatives of members permitted to effect transactions on the floor of such exchange without the services of another person acting as broker, below such number in effect on May 1, 1975, or the date such exchange was registered with the Commission, whichever is later: *And provided further,* That the Commission, in accordance with the provisions of section 78s(c) of this title, may amend the rules of any national securities exchange to increase (but not to decrease) or to remove any limitation on the number of memberships in such exchange or the number of members or designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, if the Commission finds that such limitation imposes a burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(d) Discipline of national securities exchange members and persons associated with members; summary proceedings

(1) In any proceeding by a national securities exchange to determine whether a member or person associated with a member should be disciplined (other than a summary proceeding pursuant to paragraph (3) of this subsection), the exchange shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record. A determination by the exchange to impose a disciplinary sanction shall be supported by a statement setting forth—

(A) any act or practice in which such member or person associated with a member has been found to have engaged, or which such member or person has been found to have omitted;

(B) the specific provision of this chapter, the rules or regulations thereunder, or the rules of the exchange which any such act or practice, or omission to act, is deemed to violate; and

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[1] So in original. Probably should be "protection of investors".

[2] So in original. Probably should be "associated".

(C) the sanction imposed and the reasons therefor.

(2) In any proceeding by a national securities exchange to determine whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the exchange or a member thereof (other than a summary proceeding pursuant to paragraph (3) of this subsection), the exchange shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. A determination by the exchange to deny membership, bar a person from becoming associated with a member, or prohibit or limit a person with respect to access to services offered by the exchange or a member thereof shall be supported by a statement setting forth the specific grounds on which the denial, bar, or prohibition or limitation is based.

(3) A national securities exchange may summarily (A) suspend a member or person associated with a member who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization, (B) suspend a member who is in such financial or operating difficulty that the exchange determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the exchange, or (C) limit or prohibit any person with respect to access to services offered by the exchange if subparagraph (A) or (B) of this paragraph is applicable to such person or, in the case of a person who is not a member, if the exchange determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the exchange. Any person aggrieved by any such summary action shall be promptly afforded an opportunity for a hearing by the exchange in accordance with the provisions of paragraph (1) or (2) of this subsection. The Commission, by order, may stay any such summary action on its own motion or upon application by any person aggrieved thereby, if the Commission determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and the protection of investors.

(e) Commissions, allowances, discounts, and other fees

(1) On and after June 4, 1975, no national securities exchange may impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members: *Provided, however,* That until May 1, 1976, the preceding provisions of this paragraph shall not prohibit any such exchange from imposing or fixing any schedule of commissions, allowances, discounts, or other fees to be charged by its members for acting as broker on the floor of the exchange or as odd-lot dealer: *And provided further,* That the Commission, in accordance with the provisions of section 78s(b) of this title as modified by the provisions of paragraph (4) of this subsection, may—

(A) permit a national securities exchange, by rule, to impose a reasonable schedule or fix reasonable rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange prior to November 1, 1976, if the Commission finds that such schedule or fixed rates of commissions, allowances, discounts, or other fees are in the public interest; and

(B) permit a national securities exchange, by rule, to impose a schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange after November 1, 1976, if the Commission finds that such schedule or fixed rates of commissions, allowances, discounts, or other fees (i) are reasonable in relation to the costs of providing the service for which such fees are charged (and the Commission publishes the standards employed in adjudging reasonableness) and (ii) do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter, taking into consideration the competitive effects of permitting such schedule or fixed rates weighed against the competitive effects of other lawful actions which the Commission is authorized to take under this chapter.

(2) Notwithstanding the provisions of section 78s(c) of this title, the Commission, by rule, may abrogate any exchange rule which imposes a schedule or fixes rates of commissions, allowances, discounts, or other fees, if the Commission determines that such schedule or fixed rates are no longer reasonable, in the public interest, or necessary to accomplish the purposes of this chapter.

(3) Until December 31, 1976, the Commission, on a regular basis, shall file with the Speaker of the House and the President of the Senate information concerning the effect on the public interest, protection of investors, and maintenance of fair and orderly markets of the absence of any schedule or fixed rates of commissions, allowances, discounts, or other fees to be charged by members of any national securities exchange for effecting transactions on such exchange.

(4)(A) Before approving or disapproving any proposed rule change submitted by a national securities exchange which would impose a schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange, the Commission shall afford interested persons (i) an opportunity for oral presentation of data, views, and arguments and (ii) with respect to any such rule concerning transactions effected after November 1, 1976, if the Commission determines there are disputed issues of material fact, to present such rebuttal submissions and to conduct (or have conducted under subparagraph (B) of this paragraph) such cross-examination as the Commission determines to be appropriate and required for full disclosure and proper resolution of such disputed issues of material fact.

(B) The Commission shall prescribe rules and make rulings concerning any proceeding in accordance with subparagraph (A) of this paragraph designed to avoid unnecessary costs or delay. Such rules or rulings may (i) impose reasonable time limits on each interested person's oral presentations, and (ii) require any cross-examination to which a person may be entitled under subparagraph (A) of this paragraph to be conducted by the Commission on behalf of that person in such manner as the Commission determines to be appropriate and required for full disclosure and proper resolution of disputed issues of material fact.

(C)(i) If any class of persons, the members of which are entitled to conduct (or have conducted) cross-examination under subparagraphs (A) and (B) of this paragraph and which have, in the view of the Commission, the same or similar interests in the proceeding, cannot agree upon a single representative of such interests for purposes of cross-examination, the Commission may make rules and rulings specifying the manner in which such interests shall be represented and such cross-examination conducted.

(ii) No member of any class of persons with respect to which the Commission has specified the manner in which its interests shall be represented pursuant to clause (i) of this subparagraph shall be denied, pursuant to such clause (i), the opportunity to conduct (or have conducted) cross-examination as to issues affecting his particular interests if he satisfies the Commission that he has made a reasonable and good faith effort to reach agreement upon group representation and there are substantial and relevant issues which would not be presented adequately by group representation.

(D) A transcript shall be kept of any oral presentation and cross-examination.

(E) In addition to the bases specified in section 78y(a) of this title, a reviewing Court may set aside an order of the Commission under section 78s(b) of this title approving an exchange rule imposing a schedule or fixes [1] rates of commissions, allowances, discounts, or other fees, if the Court finds—

(1) a Commission determination under paragraph (4)(A) of this subsection that an interested person is not entitled to conduct cross-examination or make rebuttal submissions, or

(2) a Commission rule or ruling under paragraph (4)(B) of this subsection limiting the petitioner's cross-examination or rebuttal submissions,

has precluded full disclosure and proper resolution of disputed issues of material fact which were necessary for fair determination by the Commission.

(f) Compliance of non-members with exchange rules

The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to assure equal regulation, may require—

(1) any person not a member or a designated representative of a member of a national securities exchange effecting transactions on such exchange without the services of another person acting as a broker, or

(2) any broker or dealer not a member of a national securities exchange effecting transactions on such exchange on a regular basis,

to comply with such rules of such exchange as the Commission may specify.

(June 6, 1934, ch. 404, title I, § 6, 48 Stat. 885; June 4, 1975, Pub. L. 94-29, § 4, 89 Stat. 104.)

References in Text

This chapter, referred to in subsecs. (b) to (e), in the original read "this title". See Reference in Text note set out under section 78a of this title.

Amendments

1975—Pub. L. 94-29 restructured the entire section and, in addition, authorized the Commission to require an exchange to file such documents and information as it deems necessary or appropriate in the public interest or for the protection of investors and to prescribe the form and substance of an exchange's application for registration, expanded to eight the number of explicit statutory requirements that must be satisfied before an exchange may be registered as a national securities exchange, set forth the authority of a national securities exchange to admit or deny persons membership or association with members, prescribed exchange procedures for instituting disciplinary actions, denying membership, and summarily suspending members or persons associated with members, specified the authority of national securities exchanges to impose schedules or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for transacting business on the exchange, and empowered the Commission to regulate any broker or dealer who effects transactions on an exchange on a regular basis but who is not a member of that exchange and any person who effects transactions on an exchange without the services of another person acting as broker.

Effective Date of 1975 Amendment

Amendment by Pub. L. 94-29 effective June 4, 1975, except for amendment of subsecs. (a) through (d) by Pub. L. 94-29 to be effective 180 days after June 4, 1975, with provisions of subsecs. (b)(2) and (c)(6), as amended by Pub. L. 94-29, or rules or regulations thereunder, not to apply in a way so as to deprive any person of membership in any national securities exchange (or its successor) of which such person was, on June 4, 1975, a member or a member firm as defined in the constitution of such exchange, or so as to deny membership in any such exchange (or its successor) to a natural person who is or becomes associated with such member or member firm, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Changes in Organization and Rules of National Securities Exchanges and Registered Securities Associations

Section 31(b) of Pub. L. 94-29 provided that: "If it appears to the Commission at any time within one year of the effective date of any amendment made by this Act [see Short Title of 1975 Amendment note under section 78a of this title] to the Securities Exchange Act of 1934 that the organization or rules of any national securities exchange or registered securities association registered with the Commission on the date of enactment of this Act [June 4, 1975] do not comply with such Act as amended, the Commission shall so notify such exchange or association in writing, specifying the respects in which the exchange or association is not in compliance with such Act. On and after the one hundred eightieth day following the date of receipt of such notice by a national securities exchange or registered securities association, the Commission, without regard to the provisions of section 19(h) of the Securities Exchange Act of 1934 [section 78s(h) of this title], as amended by this Act, is authorized by order, to suspend the registration of any such exchange or association or impose limitations on the activities, functions, and operations of any such exchange or association, if the Commission finds, after notice and opportunity for hearing, that the organization or rules of such exchange or association do not comply with such Act. Any such suspension or limitation shall continue in effect until the Commission, by order, declares that such exchange or association is in compliance with such requirements."

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[1] So in original, probably should be "fixed".

Cross References

Effective date, see section 78hh of this title.

Exchange registered under this section as national securities exchange under Investment Company Act of 1940, see section 80a-2 of this title.

National securities exchange defined, see section 80b-2 of this title.

Rules and regulations, power of Commission and Board of Governors of Federal Reserve System to make, see section 78w of this title.

Transactions on unregistered exchanges prohibited, see section 78e of this title.

Section Referred to in Other Sections

This section is referred to in sections 78c, 78e, 78o, 78s, 78y, 78hh, 80a-2, 80b-2 of this title; title 29 section 1002.

§ 78g. Margin requirements

(a) Rules and regulations for extension of credit; standard for initial extension; undermargined accounts

For the purpose of preventing the excessive use of credit for the purchase or carrying of securities, the Board of Governors of the Federal Reserve System shall, prior to October 1, 1934, and from time to time thereafter, prescribe rules and regulations with respect to the amount of credit that may be initially extended and subsequently maintained on any security (other than an exempted security). For the initial extension of credit, such rules and regulations shall be based upon the following standard: An amount not greater than whichever is the higher of—

(1) 55 per centum of the current market price of the security, or

(2) 100 per centum of the lowest market price of the security during the preceding thirty-six calendar months, but not more than 75 per centum of the current market price.

Such rules and regulations may make appropriate provision with respect to the carrying of undermargined accounts for limited periods and under specified conditions; the withdrawal of funds or securities; the substitution or additional purchases of securities; the transfer of accounts from one lender to another; special or different margin requirements for delayed deliveries, short sales, arbitrage transactions, and securities to which paragraph (2) of this subsection does not apply; the bases and the methods to be used in calculating loans, and margins and market prices; and similar administrative adjustments and details. For the purposes of paragraph (2) of this subsection, until July 1, 1936, the lowest price at which a security has sold on or after July 1, 1933, shall be considered as the lowest price at which such security has sold during the preceding thirty-six calendar months.

(b) Lower and higher margin requirements

Notwithstanding the provisions of subsection (a) of this section, the Board of Governors of the Federal Reserve System, may, from time to time, with respect to all or specified securities or transactions, or classes of securities, or classes of transactions, by such rules and regulations (1) prescribe such lower margin requirements for the initial extension or maintenance of credit as it deems necessary or appropriate for the accommodation of commerce and industry, having due regard to the general credit situation of the country, and (2) prescribe such higher margin requirements for the initial extension or maintenance of credit as it may deem necessary or appropriate to prevent the excessive use of credit to finance transactions in securities.

(c) Unlawful credit extension to customers

It shall be unlawful for any member of a national securities exchange or any broker or dealer, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer—

(1) on any security (other than an exempted security), in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System shall prescribe under subsections (a) and (b) of this section;

(2) without collateral or on any collateral other than securities, except in accordance with such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe (A) to permit under specified conditions and for a limited period any such member, broker, or dealer to maintain a credit initially extended in conformity with the rules and regulations of the Board of Governors of the Federal Reserve System, and (B) to permit the extension or maintenance of credit in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of paragraph (1) of this subsection.

(d) Unlawful credit extension in violation of rules and regulations; exception to application of rules, etc.

It shall be unlawful for any person not subject to subsection (c) of this section to extend or maintain credit or to arrange for the extension or maintenance of credit for the purpose of purchasing or carrying any security, in contravention of such rules and regulations as the Board of Governors of the Federal Reserve System shall prescribe to prevent the excessive use of credit for the purchasing or carrying of or trading in securities in circumvention of the other provisions of this section. Such rules and regulations may impose upon all loans made for the purpose of purchasing or carrying securities limitations similar to those imposed upon members, brokers, or dealers by subsection (c) of this section and the rules and regulations thereunder. This subsection and the rules and regulations thereunder shall not apply (A) to a loan made by a person not in the ordinary course of his business, (B) to a loan on an exempted security, (C) to a loan to a dealer to aid in the financing of the distribution of securities to customers not through the medium of a national securities exchange, (D) to a loan by a bank on a security other than an equity security, or (E) to such other loans as the Board of Governors of the Federal Reserve System shall, by such rules and regulations as it may deem necessary or appropriate in the public interest or for the protection of investors, exempt, either unconditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection and the rules and regulations thereunder.

(e) Effective date of this section and rules and regulations

The provisions of this section or the rules and regulations thereunder shall not apply on or before July 1, 1937, to any loan or extension of credit made prior to June 6, 1934, or to the maintenance, renewal, or extension of any such loan or credit, except to the extent that the Board of Governors of the Federal Reserve System may by rules and regulations prescribe as necessary to prevent the circumvention of the provisions of this section or the rules and regulations thereunder by means of withdrawals of funds or securities, substitutions of securities, or additional purchases or by any other device.

(f) Unlawful receipt of credit; exemptions

(1) It is unlawful for any United States person, or any foreign person controlled by a United States person or acting on behalf of or in conjunction with such person, to obtain, receive, or enjoy the beneficial use of a loan or other extension of credit from any lender (without regard to whether the lender's office or place of business is in a State or the transaction occurred in whole or in part within a State) for the purpose of (A) purchasing or carrying United States securities, or (B) purchasing or carrying within the United States of any other securities, if, under this section or rules and regulations prescribed thereunder, the loan or other credit transaction is prohibited or would be prohibited if it had been made or the transaction had otherwise occurred in a lender's office or other place of business in a State.

(2) For the purposes of this subsection—

(A) The term "United States person" includes a person which is organized or exists under the laws of any State or, in the case of a natural person, a citizen or resident of the United States; a domestic estate; or a trust in which one or more of the foregoing persons has a cumulative direct or indirect beneficial interest in excess of 50 per centum of the value of the trust.

(B) The term "United States security" means a security (other than an exempted security) issued by a person incorporated under the laws of any State, or whose principal place of business is within a State.

(C) The term "foreign person controlled by a United States person" includes any noncorporate entity in which United States persons directly or indirectly have more than a 50 per centum beneficial interest, and any corporation in which one or more United States persons, directly or indirectly, own stock possessing more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock.

(3) The Board of Governors of the Federal Reserve System may, in its discretion and with due regard for the purposes of this section, by rule or regulation exempt any class of United States persons or foreign persons controlled by a United States person from the application of this subsection.

(June 6, 1934, ch. 404, title I, § 7, 48 Stat. 886; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704; July 29, 1968, Pub. L. 90-437, 82 Stat. 452; Oct. 26, 1970, Pub. L. 91-508, title III, § 301(a), 84 Stat. 1124.)

AMENDMENTS

1970—Subsec. (f). Pub. L. 91-508 added subsec. (f).

1968—Subsec. (a). Pub. L. 90-437, § 1(1), struck out "registered on a national securities exchange" following "(other than an exempted security)".

Subsec. (c). Pub. L. 90-437, § 1(2), struck out "who transacts a business in securities through the medium of any such member" following "any broker or dealer", in par. (1) struck out "registered on a national securities exchange" following "(other than an exempted security)", and in par. (2) substituted "other than securities" for "other than exempted securities and/or securities registered upon a national securities exchange".

Subsec. (d). Pub. L. 90-437, § 1(3), struck out "registered on a national securities exchange" following "the purpose of purchasing or carrying any security", and "registered on national securities exchanges" following "the purpose of purchasing or carrying securities".

CHANGE OF NAME

Act Aug. 23, 1935, substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-508 effective on the first day of the seventh calendar month which begins after Oct. 26, 1970, except as otherwise provided in section 401(c) of Pub. L. 91-508, see section 401(a) of Pub. L. 91-508, set out as a note under section 1051 of Title 31, Money and Finance.

Section 401(c) of Pub. L. 91-508 provided that: "The Board of Governors of the Federal Reserve System may by regulation provide that the amendment made by title III [adding subsec. (f) of this section] shall be effective on any date not earlier than the publication of the regulation in the Federal Register and not later than the first day of the thirteenth calendar month which begins after the date of enactment [Oct. 26, 1970]."

VALIDITY OF RULES AND REGULATIONS

Section 301(b) of Pub. L. 91-508 provided that: "The amendment made by subsection (a) of this section [adding subsec. (f) of this section] does not affect the continuing validity of any rule or regulation under section 7 of the Securities Exchange Act of 1934 [this section] in effect prior to the effective date of the amendment."

Cross References

Effective date, see section 78hh of this title.

Rules and regulations, power of Board of Governors of Federal Reserve System to make, see section 78w of this title.

Section Referred to in Other Sections

This section is referred to in sections 78o, 78hh of this title; title 31 section 1142.

§78h. Restrictions on borrowing and lending by members, brokers, and dealers

It shall be unlawful for any registered broker or dealer, member of a national securities exchange, or broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange, directly or indirectly—

(a) To borrow in the ordinary course of business as a broker or dealer on any security (other than an exempted security) registered on a national securities exchange except (1) from or through a member bank of the Federal Reserve System, (2) from any nonmember bank which shall have filed with the Board of Governors of the Federal Reserve System an agreement, which is still in force and which is in the form prescribed by the Board, undertaking to comply with all provisions of this chapter, the Federal Reserve Act as amended, [12 U.S.C. 221 et seq.], and the Banking Act of 1933, which are applicable to member banks and which relate to the use of credit to finance transactions in securities, and with such rules and regulations as may be prescribed pursuant to such provisions of law or for the purpose of preventing evasions thereof, or (3) in accordance with such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe to permit loans between such members and/or brokers and/or dealers, or to permit loans to meet emergency needs. Any such agreement filed with the Board of Governors of the Federal Reserve System shall be subject to termination at any time by order of the Board, after appropriate notice and opportunity for hearing, because of any failure by such bank to comply with the provisions thereof or with such provisions of law or rules or regulations; and, for any willful violation of such agreement, such bank shall be subject to the penalties provided for violations of rules and regulations prescribed under this chapter. The provisions of sections 78u and 78y of this title shall apply in the case of any such proceeding or order of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply in the case of proceedings and orders of the Commission.

(b) In contravention of such rules and regulations as the Commission shall prescribe for the protection of investors to hypothecate or arrange for the hypothecation of any securities carried for the account of any customer under circumstances (1) that will permit the commingling of his securities without his written consent with the securities of any other customer, (2) that will permit such securities to be commingled with the securities of any person other than a bona fide customer, or (3) that will permit such securities to be hypothecated, or subjected to any lien or claim of the pledgee, for a sum in excess of the aggregate indebtedness of such customers in respect of such securities.

(c) To lend or arrange for the lending of any securities carried for the account of any customer without the written consent of such customer or in contravention of such rules and regulations as the Commission shall prescribe for the protection of investors.

(June 6, 1934, ch. 404, title I, §8, 48 Stat. 888; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; June 4, 1975, Pub. L. 94-29, §5, 89 Stat. 109.)

References in Text

This chapter referred to in subsec. (a) in the original read "This Act". See Reference in Text note under section 78a of this title.

The Federal Reserve Act, as amended, referred to in subsec. (a), is act Dec. 23, 1913, ch. 6, 38 Stat. 251, which is classified generally to chapter 3 (§221 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Distribution note set out under section 226 of Title 12 and Tables volume.

The Banking Act of 1933, referred to in subsec. (a), is act June 16, 1933, ch. 89, 48 Stat. 162. For complete classification of this Act to the Code, see Distribution note set out under section 227 of Title 12 and Tables volume.

Amendments

1975—Pub. L. 94-29, §5(1), substituted "any registered broker or dealer, member of a national securities exchange, or broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange" for "any member of a national securities exchange, or any broker or dealer who transacts a business in securities through the medium of any such member" in the provisions preceding subsec.(a).

Subsec. (b). Pub. L. 94-29, §5(2), redesignated former subsec. (c) as (b). Former subsec. (b), which covered the maximum allowable aggregate indebtedness of brokers, was deleted.

Subsec. (c). Pub. L. 94-29, §5(2), redesignated former subsec. (d) as (c) and in subsec. (c) as so redesignated inserted "or in contravention of such rules and regulations as the Commissioner shall prescribe for the protection of investors" following "written consent of such customer". Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 94-29, §5(2), redesignated former subsec. (d) as (c) and amended the subsection as so redesignated.

Change of Name

Act Aug. 23, 1935, substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

Effective Date of 1975 Amendment

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Effective date, see section 78hh of this title.

Rules and regulations, power of Board of Governors of Federal Reserve System to make, see section 78w of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78hh of this title.

§ 78i. Manipulation of security prices

(a) Transactions relating to purchase or sale of security

It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange—

(1) For the purpose of creating a false or misleading appearance of active trading in any security registered on a national securities exchange, or a false or misleading appearance with respect to the market for any such security, (A) to effect any transaction in such security which involves no change in the beneficial ownership thereof, or (B) to enter an order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties, or (C) to enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

(3) If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to induce the purchase or sale of any security registered on a national securities exchange by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the prices of such security.

(4) If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to make, regarding any security registered on a national securities exchange, for the purpose of inducing the purchase or sale of such security, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

(5) For a consideration, received directly or indirectly from a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to induce the purchase or sale of any security registered on a national securities exchange by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.

(6) To effect either alone or with one or more other persons any series of transactions for the purchase and/or sale of any security registered on a national securities exchange for the purpose of pegging, fixing, or stabilizing the price of such security in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) Transactions relating to puts, calls, straddles, or options

It shall be unlawful for any person to effect, by use of any facility of a national securities exchange, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors—

(1) any transaction in connection with any security whereby any party to such transaction acquires any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so; or

(2) any transaction in connection with any security with relation to which he has, directly or indirectly, any interest in any such put, call, straddle, option, or privilege; or

(3) any transaction in any security for the account of any person who he has reason to believe has, and who actually has, directly or indirectly, any interest in any such put, call, straddle, option, or privilege with relation to such security.

(c) Endorsement or guarantee of puts, calls, straddles, or options

It shall be unlawful for any member of a national securities exchange directly or indirectly to endorse or guarantee the performance of any put, call, straddle, option, or privilege in relation to any security registered on a national securities exchange, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(d) Registered warrant, right, or convertible security not included in "put", "call", "straddle", or "option"

The terms "put", "call", "straddle", "option", or "privilege" as used in this section shall not include any registered warrant, right, or convertible security.

(e) Persons liable; suits at law or in equity

Any person who willfully participates in any act or transaction in violation of subsections (a), (b), or (c) of this section, shall be liable to any person who shall purchase or sell any security at a price which was affected by such act or transaction, and the person so injured may sue in law or in equity in any court of competent jurisdiction to recover the damages sustained as a result of any such act or transaction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit, and assess reasonable costs, including reasonable attorneys' fees, against either party litigant. Every person who becomes liable to make any payment under this subsection may recover contribution as in cases of contract from any person who, if joined in the original suit, would have been liable to make the same payment. No action shall be maintained to enforce any liability created under this section, unless brought within one year after the discovery of the facts constituting the violation and within three years after such violation.

(f) Section not applicable to exempted securities

The provisions of this section shall not apply to an exempted security.

(June 6, 1934, ch. 404, title I, § 9, 48 Stat. 889.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Effective date, see section 78hh of this title.

Limitation of actions under—
- Securities Act of 1933, see section 77m of this title.
- Trust Indenture Act of 1939, see section 77www of this title.

Rules and regulations, power of Commission to make, see section 78w of this title.

Undertaking for costs and reasonable attorneys' fees under—
- Securities Act of 1933, see section 77k of this title.
- This chapter for misleading statements, see section 78r of this title.
- Trust Indenture Act of 1939, see sections 77*ooo* and 77www of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Costs, see rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

Effect of rule 54 on this section, see note by Advisory Committee under rule 54.

One form of action, see rule 2.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78hh of this title.

§ 78j. Manipulative and deceptive devices

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

(a) To effect a short sale, or to use or employ any stop-loss order in connection with the purchase or sale, of any security registered on a national securities exchange, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(June 6, 1934, ch. 404, title I, § 10, 48 Stat. 891.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Effective date, see section 78hh of this title.

Rules and regulations, power of Commission to make, see section 78w of this title.

Short sales by directors, officers, and principal stockholders, see section 78p of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78k, 78hh of this title.

§ 78k. Trading by members of exchanges, brokers, and dealers

(a) Trading for own account or account of associated person; exceptions

(1) It shall be unlawful for any member of a national securities exchange to effect any transaction on such exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion: *Provided, however,* That this paragraph shall not make unlawful—

(A) any transaction by a dealer acting in the capacity of market maker;

(B) any transaction for the account of an odd-lot dealer in a security in which he is so registered;

(C) any stabilizing transaction effected in compliance with rules under section 78j(b) of this title to facilitate a distribution of a security in which the member effecting such transaction is participating;

(D) any bona fide arbitrage transaction, any bona fide hedge transaction involving a long or short position in an equity security and a long or short position in a security entitling the holder to acquire or sell such equity security, or any risk arbitrage transaction in connection with a merger, acquisition, tender offer, or similar transaction involving a recapitalization;

(E) any transaction for the account of a natural person, the estate of a natural person, or a trust (other than an investment company) created by a natural person for himself or another natural person;

(F) any transaction to offset a transaction made in error;

(G) any other transaction for a member's own account provided that (i) such member is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities, and whose gross income normally is derived principally from such business and related activities and (ii) such transaction is effected in compliance with rules of the Commission which, as a minimum, assure that the transaction is not inconsistent with the maintenance of fair and orderly markets and yields priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange; and

(H) any other transaction of a kind which the Commission, by rule, determines is consistent with the purposes of this paragraph, the protection of investors, and the maintenance of fair and orderly markets.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to assure equal regulation of exchange markets and markets occurring otherwise than on an exchange, may regulate or prohibit:

(A) transactions on a national securities exchange not unlawful under paragraph (1) of this subsection effected by any member thereof for its own account (unless such member is acting in the capacity of market maker or odd-lot dealer), the account of an associated person, or an account with respect to which such member or an associated person thereof exercises investment discretion;

(B) transactions otherwise than on a national securities exchange effected by use of the mails or any means or instrumentality of interstate commerce by any member of a national securities exchange, broker, or dealer for the account of such member, broker, or dealer (unless such member, broker, or dealer is acting in the capacity of a market maker)[1] the account of an associated person, or an account with respect to which such member, broker, or dealer or associated person thereof exercises investment discretion; and

(C) transactions on a national securities exchange effected by any broker or dealer not a member thereof for the account of such broker or dealer (unless such broker or dealer is acting in the capacity of market maker), the account of an associated person, or an account with respect to which such broker or dealer or associated person thereof exercises investment discretion.

(3) The provisions of paragraph (1) of this subsection insofar as they apply to transactions on a national securities exchange effected by a member thereof who was a member on May 1, 1975 shall not become effective until May 1, 1978. Nothing in this paragraph shall be construed to impair or limit the authority of the Commission to regulate or prohibit such transactions prior to May 1, 1978, pursuant to paragraph (2) of this subsection.

(b) Registration of members as odd-lot dealers and specialists

When not in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to remove impediments to and perfect the mechanism of a national market system, the rules of a national securities exchange may permit (1) a member to be registered as an odd-lot dealer and as such to buy and sell for his own account so far as may be reasonably necessary to carry on such odd-lot transactions, and (2) a member to be registered as a specialist. Under the rules and regulations of the Commission a specialist may be permitted to act as a broker and dealer or limited to acting as a broker or dealer. It shall be unlawful for a specialist or an official of the exchange to disclose information in regard to orders placed with such specialist which is not available to all members of the exchange, to any person other than an official of the exchange, a representative of the Commission, or a specialist who may be acting for such specialist: *Provided, however,* That the Commission, by rule, may require disclosure to all members of the exchange of all orders placed with specialists, under such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. It shall also be unlawful for a specialist permitted to act as a broker and dealer to effect on the exchange as broker any transaction except upon a market or limited price order.

(c) Exemptions from provisions of section and rules and regulations

If because of the limited volume of transactions effected on an exchange, it is in the opinion of the Commission impracticable and not necessary or appropriate in the public interest or for the protection of investors to apply any of the foregoing provisions of this section or the rules and regulations thereunder, the Commission shall have power, upon application of the exchange and on a showing that the rules of such exchange are otherwise adequate for the protection of investors, to exempt such exchange and its members from any such provision or rules and regulations.

(d) Prohibition on extension of credit by broker-dealer

It shall be unlawful for a member of a national securities exchange who is both a dealer and a broker, or for any person who both as a broker and a dealer transacts a business in securities through the medium of a member or otherwise, to effect through the use of any facility of a national securities exchange or of the mails or of any means or instrumentality of interstate commerce, or otherwise in the case of a member, (1) any transaction in connection with which, directly or indirectly, he extends or maintains or arranges for the extension or maintenance of credit to or for a customer on any security (other than an exempted security) which was a part of a new issue in the distribution of which he participated as a member of a selling syndicate or group within thirty days prior to such transaction: *Provided,* That credit shall not be deemed extended by reason of a bona fide delayed delivery of any such security against full payment of the entire purchase price thereof upon such delivery within thirty-five days after such purchase, or (2) any transaction with respect to any security (other than an exempted security) unless, if the transaction is with a customer, he discloses to such customer in writing at or before the completion of the transaction whether he is acting as a dealer for his own account, as a broker for such customer, or as a broker for some other person.

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[1] So in original, probably should be followed by a comma.

(June 6, 1934, ch. 404, title I, § 11, 48 Stat. 891; Aug. 10, 1954, ch. 667, title II, § 201, 68 Stat. 686; June 4, 1975, Pub. L. 94-29, § 6, 89 Stat. 110.)

CODIFICATION

Subsec. (e) of this section, which was contained in the original enactment and which directed the Commission to make a study, to be submitted on or before Jan. 3, 1936, of the feasibility of segregating the functions of dealer and broker, was repealed by section 6(3) of Pub. L. 94-29.

AMENDMENTS

1975—Subsec. (a). Pub. L. 94-29 prohibited stock exchange members from effecting any transaction on the exchange for its own account, the account of an associated person, or an account with respect to which the member or an associated person exercises investment discretion, exempted from that prohibition 8 types of transactions, and authorized the Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, to regulate or prohibit the specifically exempted transactions, certain transactions otherwise that on a national securities exchange, and transactions on a national securities exchange effected by a broker or dealer not a member thereof for the account of such broker or dealer, the account of an associated person, or an account with respect to which such broker, dealer, or associated person exercises investment discretion.

Subsec. (b). Pub. L. 94-29 struck out requirement that specialist's dealings be limited to those transactions reasonably necessary to permit him to maintain a fair and orderly market, expanded the Commission's rulemaking authority in the area of specialist's dealings so that the Commission may define responsibilities and restrict activities of specialists in response to changing conditions in the market, expanded the standards to be followed by the Commission in exercising its rulemaking power to include the maintenance of fair and orderly markets and the removal of impediments to and the perfection of the mechanism of a national market system, and inserted specific reference to the Commission's power to limit the activity of a specialist to that of a broker or dealer.

1954—Subsec. (d). Act Aug. 10, 1954, reduced from 6 months to 30 days the prohibition period against extending credit to purchasers of a new issue by dealers.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Effective date, see section 78hh of this title.

Rules and regulations, power of Commission to make, see section 78w of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78y, 78hh of this title.

§ 78k-1. National market system for securities; securities information processors

(a) Congressional findings; facilitating establishment of national market system for securities; designation of qualified securities

(1) The Congress finds that—

(A) The securities markets are an important national asset which must be preserved and strengthened.

(B) New data processing and communications techniques create the opportunity for more efficient and effective market operations.

(C) It is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure—

(i) economically efficient execution of securities transactions;

(ii) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets;

(iii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities;

(iv) the practicability of brokers executing investors' orders in the best market; and

(v) an opportunity, consistent with the provisions of clauses (i) and (iv) of this subparagraph, for investors' orders to be executed without the participation of a dealer.

(D) The linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.

(2) The Commission is directed, therefore, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under this chapter to facilitate the establishment of a national market system for securities (which may include subsystems for particular types of securities with unique trading characteristics) in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection. The Commission, by rule, shall designate the securities or classes of securities qualified for trading in the national market system from among securities other than exempted securities. (Securities or classes of securities so designated hereinafter[1] in this section referred to as "qualified securities".)

(3) The Commission is authorized in furtherance of the directive in paragraph (2) of this subsection—

(A) to create one or more advisory committees pursuant to the Federal Advisory Committee Act (which shall be in addition to the National Market Advisory Board established pursuant to subsection (d) of this section) and to employ one or more outside experts;

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[1] So in original, probably should read "are hereinafter".

(B) by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this chapter in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof; and

(C) to conduct studies and make recommendations to the Congress from time to time as to the possible need for modifications of the scheme of self-regulation provided for in this chapter so as to adapt it to a national market system.

(b) Securities information processors; registration; withdrawal of registration; access to services; censure; suspension or revocation of registration

(1) Except as otherwise provided in this section, it shall be unlawful for any securities information processor unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a securities information processor. The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any securities information processor or class of securities information processors or security or class of securities from any provision of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section, including the maintenance of fair and orderly markets in securities and the removal of impediments to and perfection of the mechanism of a national market system: *Provided, however,* That a securities information processor not acting as the exclusive processor of any information with respect to quotations for or transactions in securities is exempt from the requirement to register in accordance with this subsection unless the Commission, by rule or order, finds that the registration of such securities information processor is necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of this section.

(2) A securities information processor may be registered by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the address of its principal office, or offices, the names of the securities and markets for which it is then acting and for which it proposes to act as a securities information processor, and such other information and documents as the Commission, by rule, may prescribe with regard to performance capability, standards and procedures for the collection, processing, distribution, and publication of information with respect to quotations for and transaction in securities, personnel qualifications, financial condition, and such other matters as the Commission determines to be germane to the provisions of this chapter and the rules and regulations thereunder, or necessary or appropriate in furtherance of the purposes of this section.

(3) The Commission shall, upon the filing of an application for registration pursuant to paragraph (2) of this subsection, publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application. Within ninety days of the date of the publication of such notice (or within such longer period as to which the applicant consents) the Commission shall—

(A) by order grant such registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred eighty days of the date of publication of notice of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to sixty days if it finds good cause for such extension and publishes its reasons for so finding or for such longer periods as to which the applicant consents.

The Commission shall grant the registration of a securities information processor if the Commission finds that such securities information processor is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a securities information processor, comply with the provisions of this chapter and the rules and regulations thereunder, carry out its functions in a manner consistent with the purposes of this section, and, insofar as it is acting as an exclusive processor, operate fairly and efficiently. The Commission shall deny the registration of a securities information processor if the Commission does not make any such finding.

(4) A registered securities information processor may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered securities information processor is no longer in existence or has ceased to do business in the capacity specified in its application for registration, the Commission, by order, shall cancel the registration.

(5)(A) If any registered securities information processor prohibits or limits any person in respect of access to services offered, directly or indirectly, by such securities information processor, the registered securities information processor shall promptly file notice thereof with the Commission. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Any prohibition or limitation on access to services with respect to which a registered securities information processor is required by this paragraph to file notice shall be subject to review by the Commission on its own motion, or upon application by any person aggrieved thereby filed within thirty days after such notice has been filed with the Commission and received by such aggrieved person, or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such prohibition or limitation, unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

(B) In any proceeding to review the prohibition or limitation of any person in respect of access to services offered by a registered securities information processor, if the Commission finds, after notice and opportunity for hearing, that such prohibition or limitation is consistent with the provisions of this chapter and the rules and regulations thereunder and that such person has not been discriminated against unfairly, the Commission, by order, shall dismiss the proceeding. If the Commission does not make any such finding or if it finds that such prohibition or limitation imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter, the Commission, by order, shall set aside the prohibition or limitation and require the registered securities information processor to permit such person access to services offered by the registered securities information processor.

(6) The Commission, by order, may censure or place limitations upon the activities, functions, or operations of any registered securities information processor or suspend for a period not exceeding twelve months or revoke the registration of any such processor, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest, necessary or appropriate for the protection of investors or to assure the prompt, accurate, or reliable performance of the functions of such securities information processor, and that such securities information processor has violated or is unable to comply with any provision of this chapter or the rules or regulations thereunder.

(c) Rules and regulations covering use of mails or other means or instrumentalities of interstate commerce; reports of purchase or sale of qualified securities; limiting registered securities transactions to national securities exchanges

(1) No self-regulatory organization, member thereof, securities information processor, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to collect, process, distribute, publish, or prepare for distribution or publication any information with respect to quotations for or transactions in any security other than an exempted security, to assist, participate in, or coordinate the distribution or publication of such information, or to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any such security in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter to—

(A) prevent the use, distribution, or publication of fraudulent, deceptive, or manipulative information with respect to quotations for and transactions in such securities;

(B) assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information;

(C) assure that all securities information processors may, for purposes of distribution and publication, obtain on fair and reasonable terms such information with respect to quotations for and transactions in such securities as is collected, processed, or prepared for distribution or publication by any exclusive processor of such information acting in such capacity;

(D) assure that all exchange members, brokers, dealers, securities information processors, and, subject to such limitations as the Commission, by rule, may impose as necessary or appropriate for the protection of investors or maintenance of fair and orderly markets, all other persons may obtain on terms which are not unreasonably discriminatory such information with respect to quotations for and transactions in such securities as is published or distributed by any self-regulatory organization or securities information processor;

(E) assure that all exchange members, brokers, and dealers transmit and direct orders for the purchase or sale of qualified securities in a manner consistent with the establishment and operation of a national market system; and

(F) assure equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest or for the protection of investors, may require any person who has effected the purchase or sale of any qualified security by use of the mails or any means or instrumentality of interstate commerce to report such purchase or sale to a registered securities information processor, national securities exchange, or registered securities association and require such processor, exchange, or association to make appropriate distribution and publication of information with respect to such purchase or sale.

(3)(A) The Commission, by rule, is authorized to prohibit brokers and dealers from effecting transactions in securities registered pursuant to section 78*l*(b) of this title otherwise than on a national securities exchange, if the Commission finds, on the record after notice and opportunity for hearing, that—

(i) as a result of transactions in such securities effected otherwise than on a national securities exchange the fairness or orderliness of the markets for such securities has been affected in a manner contrary to the public interest or the protection of investors;

(ii) no rule of any national securities exchange unreasonably impairs the ability of any dealer to solicit or effect transactions in such securities for his own account or unreasonably restricts competition among dealers in such securities or between dealers acting in the capacity of market makers who are specialists in such securities and such dealers who are not specialists in such securities, and

(iii) the maintenance or restoration of fair and orderly markets in such securities may not be assured through other lawful means under this chapter.

The Commission may conditionally or unconditionally exempt any security or transaction or any class of securities or transactions from any such prohibition if the Commission deems such exemption consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets.

(B) For the purposes of subparagraph (A) of this paragraph, the ability of a dealer to solicit or effect transactions in securities for his own account shall not be deemed to be unreasonably impaired by any rule of an exchange fairly and reasonably prescribing the sequence in which orders brought to the exchange must be executed or which has been adopted to effect compliance with a rule of the Commission promulgated under this chapter.

(4)(A) The Commission is directed to review any and all rules of national securities exchanges which limit or condition the ability of members to effect transactions in securities otherwise than on such exchanges. On or before the ninetieth day following June 4, 1975, the Commission shall (i) report to the Congress the results of its review, including the effects on competition of such rules, and (ii) commence a proceeding in accordance with the provisions of section 78s(c) of this title to amend any such rule imposing a burden on competition which does not appear to the Commission to be necessary or appropriate in furtherance of the purposes of this chapter. The Commission shall conclude any such proceeding within ninety days of the date of publication of notice of its commencement.

(B) Review pursuant to section 78y(b) of this title of any rule promulgated by the Commission in accordance with any proceeding commenced pursuant to subparagraph (A) of this paragraph shall, except as to causes the court considers of greater importance, take precedence on the docket over all other causes and shall be assigned for consideration at the earliest practicable date and expedited in every way.

(5) No national securities exchange or registered securities association may limit or condition the participation of any member in any registered clearing agency.

(d) National Market Advisory Board

(1) Not later than one hundred eighty days after June 4, 1975, the Commission shall establish a National Market Advisory Board (hereinafter in this section referred to as the "Advisory Board") to be composed of fifteen members, not all of whom shall be from the same geographical area of the United States, appointed by the Commission for a term specified by the Commission of not less than two years or more than five years. The Advisory Board shall consist of persons associated with brokers and dealers (who shall be a majority) and persons not so associated who are representative of the public and, to the extent feasible, have knowledge of the securities markets of the United States.

(2) It shall be the responsibility of the Advisory Board to formulate and furnish to the Commission its views on significant regulatory proposals made by the Commission or any self-regulatory organization concerning the establishment, operation, and regulation of the markets for securities in the United States.

(3)(A) The Advisory Board shall study and make recommendations to the Commission as to the steps it finds appropriate to facilitate the establishment of a national market system. In so doing, the Advisory Board shall assume the responsibilities of any advisory committee appointed to advise the Commission with respect to the national market system which is in existence at the time of the establishment of the Advisory Board.

(B) The Advisory Board shall study the possible need for modifications of the scheme of self-regulation provided for in this chapter so as to adapt it to a national market system, including the need for the establishment of a new self-regulatory organization (hereinafter in this section referred to as a "National Market Regulatory Board" or "Regulatory Board") to administer the national market system. In the event the Advisory Board determines a National Market Regulatory Board should be established, it shall make recommendations as to:

(i) the point in time at which a Regulatory Board should be established;

(ii) the composition of a Regulatory Board;

(iii) the scope of the authority of a Regulatory Board;

(iv) the relationship of a Regulatory Board to the Commission and to existing self-regulatory organizations; and

(v) the manner in which a Regulatory Board should be funded.

The Advisory Board shall report to the Congress, on or before December 31, 1976, the results of such study and its recommendations, including such recommendations for legislation as it deems appropriate.

(C) In carrying out its responsibilities under this paragraph, the Advisory Board shall consult with self-regulatory organizations, brokers, dealers, securities information processors, issuers, investors, representatives of Government agencies, and other persons interested or likely to participate in the establishment, operation, or regulation of the national market system.

(e) Commission study covering maintenance of accounts for buying and selling registered securities on behalf of public customers by persons not qualifying as brokers or dealers

The Commission is authorized and directed to make a study of the extent to which persons excluded from the definitions of "broker" and "dealer" maintain accounts on behalf of public customers for buying and selling securities registered under section 78*l* of this title and whether such exclusions are consistent with the protection of investors and the other purposes of this chapter. The Commission shall report to the Congress, on or before December 31, 1976, the results of its study together with such recommendations for legislation as it deems advisable.

(June 6, 1934, ch. 404, title I, § 11A, as added June 4, 1975, Pub. L. 94-29, § 7, 89 Stat. 111.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (a)(3)(A), is Pub. L. 92-436, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective June 4, 1975, except for subsec. (b) which is effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law, see section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78y of this title.

§ 78*l*. Registration requirements for securities

(a) General requirement of registration

It shall be unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this chapter and the rules and regulations thereunder.

(b) Procedure for registration; information

A security may be registered on a national securities exchange by the issuer filing an application with the exchange (and filing with the Commission such duplicate originals thereof as the Commission may require), which application shall contain—

(1) Such information, in such detail, as to the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer, and any guarantor of the security as to principal or interest or both, as the Commission may by rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors, in respect of the following:

(A) the organization, financial structure, and nature of the business;

(B) the terms, position, rights, and privileges of the different classes of securities outstanding;

(C) the terms on which their securities are to be, and during the preceding three years have been, offered to the public or otherwise;

(D) the directors, officers, and underwriters, and each security holder of record holding more than 10 per centum of any class of any equity security of the issuer (other than an exempted security), their remuneration and their interests in the securities of, and their material contracts with, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer;

(E) remuneration to others than directors and officers exceeding $20,000 per annum;

(F) bonus and profit-sharing arrangements;

(G) management and service contracts;

(H) options existing or to be created in respect of their securities;

(I) material contracts, not made in the ordinary course of business, which are to be executed in whole or in part at or after the filing of the application or which were made not more than two years before such filing, and every material patent or contract for a material patent right shall be deemed a material contract;

(J) balance sheets for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by independent public accountants;

(K) profit and loss statements for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by independent public accountants; and

(L) any further financial statements which the Commission may deem necessary or appropriate for the protection of investors.

(2) Such copies of articles of incorporation, bylaws, trust indentures, or corresponding documents by whatever name known, underwriting arrangements, and other similar documents of, and voting trust agreements with respect to, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(3) Such copies of material contracts, referred to in paragraph (1)(I) above, as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(c) Additional or alternative information

If in the judgment of the Commission any information required under subsection (b) of this section is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such other information of comparable character as it may deem applicable to such class of issuers.

(d) Effective date of registration; withdrawal of registration

If the exchange authorities certify to the Commission that the security has been approved by the exchange for listing and registration, the registration shall become effective thirty days after the receipt of such certification by the Commission or within such shorter period of time as the Commission may determine. A security registered with a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and, upon such terms as the Commission may deem necessary to impose for the protection of investors, upon application by the issuer or the exchange to the Commission; whereupon the issuer shall be relieved from further compliance with the provisions of this section and section 78m of this title and any rules or regulations under such sections as to the securities so withdrawn or stricken. An unissued security may be registered only in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(e) Exemption from provisions of section for period ending not later than July 1, 1935

Notwithstanding the foregoing provisions of this section, the Commission may by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, permit securities listed on any exchange at the time the registration of such exchange as a national securities exchange becomes effective, to be registered for a period ending not later than July 1, 1935, without complying with the provisions of this section.

(f) Unlisted trading privileges for security originally listed on another national exchange

(1) Notwithstanding the foregoing provisions of this section, any national securities exchange, subject to the terms and conditions hereinafter set forth—

(A) may continue unlisted trading privileges to which a security had been admitted on such exchange prior to July 1, 1964;

(B) upon application to and approval of such application by the Commission, may extend unlisted trading privileges to any security listed and registered on any other national securities exchange; and

(C) upon application to and approval of such application by the Commission, may extend unlisted trading privileges to any security registered pursuant to this section or which would be required to be so registered except for the exemption from registration provided in subsection (g)(2)(B) or (g)(2)(G) of this section.

If an extension of unlisted trading privileges to a security is based upon its listing and registration on another national securities exchange, such privileges shall continue in effect only so long as such security remains listed and registered on a national securities exchange.

(2) No application pursuant to this subsection shall be approved unless the Commission finds, after notice and opportunity for hearing, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors. In considering an application for the extension of unlisted trading privileges to a security not listed and registered on a national securities exchange, the Commission shall, among other matters, take account of the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system and shall not grant any such application if any rule of the national securities exchange making application under this subsection would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

(3) The Commission shall by rules and regulations suspend unlisted trading privileges in whole or in part for any or all classes of securities for a period not exceeding twelve months, if it deems such suspension necessary or appropriate in the public interest or for the protection of investors or to prevent evasion of the purposes of this chapter.

(4) On the application of the issuer of any security for which unlisted trading privileges on any exchange have been continued or extended pursuant to this subsection, or of any broker or dealer who makes or creates a market for such security, or of any other person having a bona fide interest in the question of termination or suspension of such unlisted trading privileges, or on its own motion, the Commission shall by order terminate, or suspend for a period not exceeding twelve months, such unlisted trading privileges for such security if the Commission finds, after appropriate notice and opportunity for hearing, that such termination or suspension is necessary or appropriate in the public interest or for the protection of investors.

(5) In any proceeding under this subsection in which appropriate notice and opportunity for hearing are required, notice of not less than ten days to the applicant in such proceeding, to the issuer of the security involved, to the exchange which is seeking to continue or extend or has continued or extended unlisted trading privileges for such security, and to the exchange, if any, on which such security is listed and registered, shall be deemed adequate notice, and any broker or dealer who makes or creates a market for such security, and any other person having a bona fide interest in such proceeding, shall upon application be entitled to be heard.

(6) Any security for which unlisted trading privileges are continued or extended pursuant to this subsection shall be deemed to be registered on a national securities exchange within the meaning of this chapter. The powers and duties of the Commission under this chapter shall be applicable to the rules of an exchange in respect of any such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions, or for stated periods, exempt such securities from the operation of any provision of section 78m, 78n, or 78p of this title.

(g) Registration of securities by issuer; exemptions

(1) Every issuer which is engaged in interstate commerce, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce shall—

(A) within one hundred and twenty days after the last day of its first fiscal year ended after July 1, 1964, on which the issuer has total assets exceeding $1,000,000 and a class of equity security (other than an exempted security) held of record by seven hundred and fifty or more persons; and

(B) within one hundred and twenty days after the last day of its first fiscal year ended after two years from July 1, 1964, on which the issuer has total assets exceeding $1,000,000 and a class of equity security (other than an exempted security) held of record by five hundred or more but less than seven hundred and fifty persons,

register such security by filing with the Commission a registration statement (and such copies thereof as the Commission may require) with respect to such security containing such information and documents as the Commission may specify comparable to that which is required in an application to register a security pursuant to subsection (b) of this section. Each such registration statement shall become effective sixty days after filing with the Commission or within such shorter period as the Commission may direct. Until such registration statement becomes effective it shall not be deemed filed for the purposes of section 78r of this title. Any issuer may register any class of equity security not required to be registered by filing a registration statement pursuant to the provisions of this paragraph. The Commission is authorized to extend the date upon which any issuer or class of issuers is required to register a security pursuant to the provisions of this paragraph.

(2) The provisions of this subsection shall not apply in respect of—

(A) any security listed and registered on a national securities exchange.

(B) any security issued by an investment company registered pursuant to section 80a-8 of this title.

(C) any security, other than permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital, issued by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution.

(D) any security of an issuer organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(E) any security of an issuer which is a "cooperative association" as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended [12 U.S.C. 1141 et seq.], or a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

(F) any security issued by a mutual or cooperative organization which supplies a commodity or service primarily for the benefit of its members and operates not for pecuniary profit, but only if the security is part of a class issuable only to persons who purchase commodities or services from the issuer, the security is transferable only to a successor in interest or occupancy of premises serviced or to be served by the issuer, and no dividends are payable to the holder of the security.

(G) any security issued by an insurance company if all of the following conditions are met:

(i) Such insurance company is required to and does file an annual statement with the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.

(ii) Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect of securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

(iii) After July 1, 1966, the purchase and sales of securities issued by such insurance company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in section 78p of this title.

(H) any interest or participation in any collective trust funds maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (i) a stock-bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of title 26, or (ii) an annuity plan which meets the requirements for deduction of the employer's contribution under section 404(a)(2) of title 26.

(3) The Commission may by rules or regulations or, on its own motion, after notice and opportunity for hearing, by order, exempt from this subsection any security of a foreign issuer, including any certificate of deposit for such a security, if the Commission finds that such exemption is in the public interest and is consistent with the protection of investors.

(4) Registration of any class of security pursuant to this subsection shall be terminated ninety days, or such shorter period as the Commission may determine, after the issuer files a certification with the Commission that the number of holders of record of such class of security is reduced to less than three hundred persons. The Commission shall after notice and opportunity for hearing deny termination of registration if it finds that the certification is untrue. Termination of registration shall be deferred pending final determination on the question of denial.

(5) For the purposes of this subsection the term "class" shall include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may for the purpose of this subsection define by rules and regulations the terms "total

assets" and "held of record" as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection.

(h) Exemption by rules and regulations from certain provisions of section

The Commission may by rules and regulations, or upon application of an interested person, by order, after notice and opportunity for hearing, exempt in whole or in part any issuer or class of issuers from the provisions of subsection (g) of this section or from section 78m, 78n, or 78o(d) of this title or may exempt from section 78p of this title any officer, director, or beneficial owner of securities of any issuer, any security of which is required to be registered pursuant to subsection (g) hereof, upon such terms and conditions and for such period as it deems necessary or appropriate, if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. The Commission may, for the purposes of any of the above-mentioned sections or subsections of this chapter, classify issuers and prescribe requirements appropriate for each such class.

(i) Securities issued by banks

In respect of any securities issued by banks the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] or institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, the powers, functions, and duties vested in the Commission to administer and enforce this section and sections 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p of this title, (1) with respect to national banks and banks operating under the Code of Law for the District of Columbia are vested in the Comptroller of the Currency, (2) with respect to all other member banks of the Federal Reserve System are vested in the Board of Governors of the Federal Reserve System, (3) with respect to all other insured banks are vested in the Federal Deposit Insurance Corporation, and (4) with respect to institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation are vested in the Federal Home Loan Bank Board. The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in them as provided in this subsection. In carrying out their responsibilities under this subsection, the agencies named in the first sentence of this subsection shall issue substantially similar regulations to regulations and rules issued by the Commission under this section and sections 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p of this title unless they find that implementation of substantially similar regulations with respect to insured banks and insured institutions are not necessary or appropriate in the public interest or for protection of investors, and publish such findings, and the detailed reasons therefor, in the Federal Register. Such regulations of the above-named agencies, or the reasons for failure to publish such substantially similar regulations to those of the Commission, shall be published in the Federal Register within 120 days of October 28, 1974, and, thereafter, within 60 days of any changes made by the Commission in its relevant regulations and rules.

(j) Denial, suspension, or revocation of registration; notice and hearing

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer, of such security has failed to comply with any provision of this chapter or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

(k) Suspension of trading in any security

If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading in any security (other than an exempted security) for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding ninety days. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended.

(*l*) Issuance of any security in contravention of rules and regulations; application to annuity contracts and variable life policies

It shall be unlawful for an issuer, any class of whose securities is registered pursuant to this section or would be required to be so registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of this section, by the use of any means or instrumentality of interstate commerce, or of the mails, to issue, either originally or upon transfer, any of such securities in a form or with a format which contravenes such rules and regulations as the Commission may prescribe as necessary or appropriate for the prompt and accurate clearance and settlement of transactions in securities. The provisions of this subsection shall not apply to variable annuity contracts or variable life policies issued by an insurance company or its separate accounts.

(m) Study and investigation of practice of recording ownership of securities; report to Congress

The Commission is authorized and directed to make a study and investigation of the practice of recording the ownership of securities in the records of the issuer in other than the name of the beneficial owner of such securities to determine (1) whether such practice is consistent with the purposes of this chapter, with particular reference to subsection (g) of this section and sections 78m, 78n, 78o(d), 78p, and 78q-1 of this title, and (2) whether steps can be taken to facilitate communications between issuers and the beneficial owners of their securities while at the same time retaining the benefits of such practice. The Commission shall report to the Congress its preliminary findings within six months after June 4, 1975, and its final conclusions and recommendations within one year of such date.

(June 6, 1934, ch. 404, title I, § 12, 48 Stat. 892; May 27, 1936, ch. 462, § 1, 49 Stat. 1375; Aug. 10, 1954, ch. 667, title II, § 202, 68 Stat. 686; Aug. 20, 1964, Pub. L. 88-467, § 3, 78 Stat. 565-568; July 29, 1968, Pub. L. 90-439, § 1, 82 Stat. 454; Dec. 14, 1970, Pub. L. 91-547, § 28(c), 84 Stat. 1435; Oct. 28, 1974, Pub. L. 93-495, title I, § 105(b), 88 Stat. 1503; June 4, 1975, Pub. L. 94-29, §§ 8, 9, 89 Stat. 117, 118.)

REFERENCES IN TEXT

This chapter referred to in subsecs. (a), (f), (j), and (m) in the original read "this title". See References in Text note under section 78a of this title.

The Agricultural Marketing Act, approved June 15, 1929, as amended, referred to in subsec. (g)(2)(E), is classified to chapter 7A (§ 1141 et seq.) of Title 12, Banks and Banking.

The Federal Deposit Insurance Act, referred to in subsec. (i), is classified to chapter 16 (§ 1811 et seq.) of Title 12, Banks and Banking.

AMENDMENTS

1975—Subsec. (f)(1). Pub. L. 94-29, § 8(1), added subpar. (C) and in the provisions following subpar. (C), substituted "is based" for "was originally based" and "remains listed and registered on a national securities exchange" for "shall remain listed and registered on any other national securities exchange".

Subsec. (f)(2). Pub. L. 94-29, § 8(1), substituted "after notice and opportunity for hearing" for "after appropriate notice and opportunity for hearing" and "consistent with the maintenance of fair and orderly markets and the protection of investors" for "necessary or appropriate in the public interest or for the protection of investors" in the existing provisions and added the enumeration of matters to be taken into account by the Commission in considering an application for the extension of unlisted trading privileges to a security not listed and registered on a national securities exchange.

Subsec. (f)(6). Pub. L. 94-29, § 8(2), substituted "this chapter" for "section 78s(b) of this title".

Subsecs. (j) to (m). Pub. L. 94-29, § 9, added subsecs. (j) to (m).

1974—Subsec. (i). Pub. L. 93-495 added coverage of institutions insured by the Federal Savings and Loan Insurance Corporation, cl. (4), and provisions authorizing the Federal Home Loan Bank Board to promulgate necessary rules and regulations, and substituted provisions relating to issuance of regulations in order to implement agency responsibility under this subsec. for provisions relating to the binding effect of rules, regulations, forms or orders issued or adopted by the Commission pursuant to this chapter.

1970—Subsec. (g)(2)(H). Pub. L. 91-547 added subpar. (H).

1968—Subsec. (i). Pub. L. 90-439 added "78n(d), 78n(f)," following "78n(c)".

1964—Subsec. (b)(1)(I). Pub. L. 88-467, § 3(a)(2), added subpar. (I). Former subpar. (I) redesignated (J).

Subsec. (b)(1)(J) to (L). Pub. L. 88-467, § (3)(a)(1), redesignated former subpars. (I) to (K) as (J) to (L), respectively.

Subsec. (b)(3). Pub. L. 88-467, § 3(a)(3), added par. (3).

Subsec. (f)(1). Pub. L. 88-467, § 3(b), designated the first par. as (1), redesignated clause (1) as clause (A) and substituted therein "July 1, 1964" for "March 1, 1934", redesignated clause (2) as clause (B) and deleted therefrom the provision for continuation of unlisted trading privileges, which is now incorporated in the concluding sentence, and deleted clause (3) which permitted a national security exchange to extend unlisted trading privileges to any security in respect to which there was available information substantially equivalent to that available in respect to a security duly listed and registered on a national securities exchange, so long as the registration statement was effective and the reports and data continued to be filed.

Subsec. (f)(2). Pub. L. 88-467, § 3(b), designated the first sentence of the second par. as (2) and substituted therein "finds, after appropriate notice and opportunity for hearing, that the extension" for "finds that the continuation or extension", and deleted the second through the sixth sentences of such second par. which related as follows: the second sentence, to notice and opportunity for hearing, now incorporated in par. (2); the third sentence, to conditions (respecting sufficiently widespread public distribution and sufficient public trading activity) for approval of application to extend unlisted trading privileges to any security pursuant to former clauses (2) and (3) of subsec. (f); the fourth sentence, to terms and conditions (subjecting issuer, officers, and directors of issuer, and beneficial owners of more than 10 per centum of the securities to duties equivalent to duties if the securities were registered on a national security exchange) for approval of application to extend unlisted trading privileges to any security pursuant to former clause (3) of subsec. (f); the fifth sentence, to requirement for differentiation by national security exchanges between quotations or transactions in listed securities and in securities with unlisted trading privileges, now covered by section 78s(b) of this title; the sixth sentence, to grouping under separate headings of quotations or transactions in listed securities and in securities with unlisted trading privileges, in the publication of quotations or transactions.

Subsec. (f)(3). Pub. L. 88-467, § 3(b), designated the third par. as (3).

Subsec. (f)(4). Pub. L. 88-467, § 3(b), designated the second sentence of the fourth par. as (4), deleted therefrom "by reason of inadequate public distribution of such security in the vicinity of said exchange, or by reason of inadequate public trading activity or of the character of trading therein on said exchange," preceding "such termination or suspension is necessary", and deleted the first sentence of the fourth par. which provided for the termination under certain conditions of unlisted trading privileges continued for any security pursuant to former clause (1) of subsec. (f), now incorporated in par. (1)(A) of subsec. (f).

Subsec. (f)(5), (6). Pub. L. 88-467, § 3(b), designated the fifth and sixth pars. as (5) and (6).

Subsecs. (g) to (i). Pub. L. 88-467, § 3(c) to (e), added subsecs. (g) to (i).

1954—Subsec. (d). Act Aug. 10, 1954, repealed the last sentence requiring that rules and regulations limit the registration of unissued security to specified cases.

1936—Subsec. (f). Act May 27, 1936, affected first paragraph and added the subsequent paragraphs.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Subsec. (g)(2)(H) of this section effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-467 of subsecs. (b)(1)(I) to (L), (3) and (g)(1) of this section effective July 1, 1964, and of subsecs. (f), (g)(2) to (5), (h), and (i) of this section effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Applications for unlisted trading privileges deemed filed and approved, see section 78l-1 of this title.

Cooperative association defined under Agricultural Marketing Act, as amended, see section 1141j of Title 12, Banks and Banking.

Effective date, see sections 78hh and 78hh-1 of this title.

Issue of securities by electric utility company engaged in interstate commerce, see section 824c of Title 16, Conservation.

Periodical and other reports, see section 78m of this title.

Review by Commission of actions with respect to delegation of its functions, see section 78d-1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78d-1, 78k-1, 78l-1, 78m, 78n, 78o, 78p, 78q-1, 78hh, 78hh-1 of this title; title 16 section 824c.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 35-222, 35-223 of the District of Columbia Code.

§ 78l-1. Applications for unlisted trading privileges deemed filed under section 78l of this title

Any application to continue unlisted trading privileges for any security heretofore filed by any exchange and approved by the Commission pursuant to clause (1) of subsection (f) of section 78l of this title and rules and regulations thereunder shall be deemed to have been filed and approved pursuant to clause (1) of said subsection (f).

(May 27, 1936, ch. 462, § 2, 49 Stat. 1377.)

CODIFICATION

Section was not enacted as a part of the Securities Exchange Act of 1934 which comprises this chapter.

CROSS REFERENCES

Effective date, see section 78 hh-1 of this title.

§ 78m. Periodical and other reports

(a) Reports by issuer of security; contents

Every issuer of a security registered pursuant to section 78l of this title shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security—

(1) such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to section 78l of this title, except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962.

(2) such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof), as the Commission may prescribe.

Every issuer of a security registered on a national securities exchange shall also file a duplicate original of such information, documents, and reports with the exchange.

(b) Form of report

The Commission may prescribe, in regard to reports made pursuant to this chapter, the form or forms in which the required information shall be set forth, the items or details to be shown in the balance sheet and the earning statement, and the methods to be followed in the preparation of reports, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of separate and/or consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer; but in the case of the reports of any person whose methods of accounting are prescribed under the provisions of any law of the United States, or any rule or regulation thereunder, the rules and regulations of the Commission with respect to reports shall not be inconsistent with the requirements imposed by such law or rule or regulation in respect of the same subject matter (except that such rules and regulations of the Commission may be inconsistent with such requirements to the extent that the Commission determines that the public interest or the protection of investors so requires).

(c) Alternative reports

If in the judgment of the Commission any report required under subsection (a) of this section is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof of[1] the submission of such reports of comparable character as it may deem applicable to such class or classes of issuers.

(d) Reports by persons acquiring more than five per centum of certain classes of securities

(1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 78l of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section

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[1] So in original.

78*l*(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.]; is directly or indirectly the beneficial owner of more than 5 per centum of such class shall, within ten days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and file with the Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors—

(A) the background and identity of all persons by whom or on whose behalf the purchases have been or are to be effected;

(B) the source and amount of the funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank, as defined in section 78c(a)(6) of this title, if the person filing such statement so requests, the name of the bank shall not be made available to the public;

(C) if the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other persons, or to make any other major change in its business or corporate structure;

(D) the number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) by each associate of such person, giving the name and address of each such associate; and

(E) information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.

(2) If any material change occurs in the facts set forth in the statements to the issuer and the exchange, and in the statement filed with the Commission, an amendment shall be transmitted to the issuer and the exchange and shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of this subsection.

(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(5) The Commission, by rule or regulation or by order, may permit any person to file in lieu of the statement required by paragraph (1) of this subsection or the rules and regulations thereunder, a notice stating the name of such person, the number of shares of any equity securities subject to paragraph (1) which are owned by him, the date of their acquisition and such other information as the Commission may specify, if it appears to the Commission that such securities were acquired by such person in the ordinary course of his business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer nor in connection with or as a participant in any transaction having such purpose or effect.

(6) The provisions of this subsection shall not apply to—

(A) any acquisition or offer to acquire securities made or proposed to be made by means of a registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.];

(B) any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, does not exceed 2 per centum of that class;

(C) any acquisition of an equity security by the issuer of such security;

(D) any acquisition or proposed acquisition of a security which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

(e) Purchase of securities by issuer

(1) It shall be unlawful for an issuer which has a class of equity securities registered pursuant to section 78*l* of this title, or which is a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], to purchase any equity security issued by it if such purchase is in contravention of such rules and regulations as the Commission, in the public interest or for the protection of investors, may adopt (A) to define acts and practices which are fraudulent, deceptive, or manipulative, and (B) to prescribe means reasonably designed to prevent such acts and practices. Such rules and regulations may require such issuer to provide holders of equity securities of such class with such information relating to the reasons for such purchase, the source of funds, the number of shares to be

purchased, the price to be paid for such securities, the method of purchase, and such additional information, as the Commission deems necessary or appropriate in the public interest or for the protection of investors, or which the Commission deems to be material to a determination whether such security should be sold.

(2) For the purpose of this subsection, a purchase by or for the issuer or any person controlling, controlled by, or under common control with the issuer, or a purchase subject to control of the issuer or any such person, shall be deemed to be a purchase by the issuer. The Commission shall have power to make rules and regulations implementing this paragraph in the public interest and for the protection of investors, including exemptive rules and regulations covering situations in which the Commission deems it unnecessary or inappropriate that a purchase of the type described in this paragraph shall be deemed to be a purchase by the issuer for purposes of some or all of the provisions of paragraph (1) of this subsection.

(f) Reports by institutional investment managers

(1) Every institutional investment manager which uses the mails, or any means or instrumentality of interstate commerce in the course of its business as an institutional investment manager and which exercises investment discretion with respect to accounts holding equity securities of a class described in subsection (d)(1) of this section having an aggregate fair market value on the last trading day in any of the preceding twelve months of at least $100,000,000 or such lesser amount (but in no case less than $10,000,000) as the Commission, by rule, may determine, shall file reports with the Commission in such form, for such periods, and at such times after the end of such periods as the Commission, by rule, may prescribe, but in no event shall such reports be filed for periods longer than one year or shorter than one quarter. Such reports shall include for each such equity security held on the last day of the reporting period by accounts (in aggregate or by type as the Commission, by rule, may prescribe) with respect to which the institutional investment manager exercises investment discretion (other than securities held in amounts which the Commission, by rule, determines to be insignificant for purposes of this subsection), the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value of each such security. Such reports may also include for accounts (in aggregate or by type) with respect to which the institutional investment manager exercises investment discretion such of the following information as the Commission, by rule, prescribes—

(A) the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value or cost or amortized cost of each other security (other than an exempted security) held on the last day of the reporting period by such accounts;

(B) the aggregate fair market value or cost or amortized cost of exempted securities (in aggregate or by class) held on the last day of the reporting period by such accounts;

(C) the number of shares of each equity security of a class described in subsection (d)(1) of this section held on the last day of the reporting period by such accounts with respect to which the institutional investment manager possesses sole or shared authority to exercise the voting rights evidenced by such securities;

(D) the aggregate purchases and aggregate sales during the reporting period of each security (other than an exempted security) effected by or for such accounts; and

(E) with respect to any transaction or series of transactions having a market value of at least $500,000 or such other amount as the Commission, by rule, may determine, effected during the reporting period by or for such accounts in any equity security of a class described in subsection (d)(1) of this section—

(i) the name of the issuer and the title, class, and CUSIP number of the security;

(ii) the number of shares or principal amount of the security involved in the transaction;

(iii) whether the transaction was a purchase or sale;

(iv) the per share price or prices at which the transaction was effected;

(v) the date or dates of the transaction;

(vi) the date or dates of the settlement of the transaction;

(vii) the broker or dealer through whom the transaction was effected;

(viii) the market or markets in which the transaction was effected; and

(ix) such other related information as the Commission, by rule, may prescribe.

(2) The Commission, by rule, or order, may exempt, conditionally or unconditionally, any institutional investment manager or security or any class of institutional investment managers or securities from any or all of the provisions of this subsection or the rules thereunder.

(3) The Commission shall make available to the public for a reasonable fee a list of all equity securities of a class described in subsection (d)(1) of this section, updated no less frequently than reports are required to be filed pursuant to paragraph (1) of this subsection. The Commission shall tabulate the information contained in any report filed pursuant to this subsection in a manner which will, in the view of the Commission, maximize the usefulness of the information to other Federal and State authorities and the public. Promptly after the filing of any such report, the Commission shall make the information contained therein conveniently available to the public for a reasonable fee in such form as the Commission, by rule, may prescribe, except that the Commission, as it determines to be necessary or appropriate in the public interest or for the protection of investors, may delay or prevent public disclosure of any such information in accordance with section 552 of title 5. Notwithstanding the preceding sentence, any such information identifying the securities held by the account of a natural person or an estate or trust (other than a business trust or investment company) shall not be disclosed to the public.

(4) In exercising its authority under this subsection, the Commission shall determine (and

so state) that its action is necessary or appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets or, in granting an exemption, that its action is consistent with the protection of investors and the purposes of this subsection. In exercising such authority the Commission shall take such steps as are within its power, including consulting with the Comptroller General of the United States, the Director of the Office of Management and Budget, the appropriate regulatory agencies, Federal and State authorities which, directly or indirectly, require reports from institutional investment managers of information substantially similar to that called for by this subsection, national securities exchanges, and registered securities associations, (A) to achieve uniform, centralized reporting of information concerning the securities holdings of and transactions by or for accounts with respect to which institutional investment managers exercise investment discretion, and (B) consistently with the objective set forth in the preceding subparagraph, to avoid unnecessarily duplicative reporting by, and minimize the compliance burden on, institutional investment managers. Federal authorities which, directly or indirectly, require reports from institutional investment managers of information substantially similar to that called for by this subsection shall cooperate with the Commission in the performance of its responsibilities under the preceding sentence. An institutional investment manager which is a bank, the deposits of which are insured in accordance with the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.], shall file with the appropriate regulatory agency a copy of every report filed with the Commission pursuant to this subsection.

(5)(A) For purposes of this subsection the term "institutional investment manager" includes any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person.

(B) The Commission shall adopt such rules as it deems necessary or appropriate to prevent duplicative reporting pursuant to this subsection by two or more institutional investment managers exercising investment discretion with respect to the same amount.[1]

(June 6, 1934, ch. 404, title I, § 13, 48 Stat. 894; Aug. 20, 1964, Pub. L. 88-467, § 4, 78 Stat. 569; July 29, 1968, Pub. L. 90-439, § 2, 82 Stat. 454; Dec. 22, 1970, Pub. L. 91-567, §§ 1, 2, 84 Stat. 1497; June 4, 1975, Pub. L. 94-29, § 10, 89 Stat. 119; Feb. 5, 1976, Pub. L. 94-210, title III, § 308(b), 90 Stat. 57.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), in the original read "this title". See References in Text note under section 78a of this title.

The Investment Company Act of 1940, referred to in subsecs. (d)(1), and (e)(1), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified to subchapter I (§ 80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables volume.

The Securities Act of 1933, referred to in subsec. (d)(6)(A) of this section, is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

The Federal Deposit Insurance Act, referred to in subsec. (f)(4), is classified generally to chapter 16 (§ 1811 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of Title 12 and Tables volume.

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-210 substituted provisions relating to exceptions for inconsistent rules and regulations, for provisions relating to reporting requirements for carriers subject to the provisions of section 20 of title 49, or other carriers required to make reports of the same general character as those required under section 20 of title 49.

1975—Subsec. (f). Pub. L. 94-29 added subsec. (f).

1970—Subsec. (d)(1). Pub. L. 91-567, § 1(a), included equity securities of insurance companies which would have been required to be registered except for the exemption contained in section 78*l*(g)(2)(G) of this title, and substituted "5 per centum" for "10 per centum".

Subsec. (d)(5). Pub. L. 91-567, § 1(b), added subsec. (d)(5) and redesignated former subsec. (d)(5) as (d)(6).

Subsec. (d)(6). Pub. L. 91-567, § 1(b), redesignated former subsec. (d)(5) as (d)(6).

Subsec. (e)(2). Pub. L. 91-567, § 2, inserted provisions empowering the Commission to make rules and regulations implementing the paragraph in the public interest and for the protection of investors.

1968—Subsecs. (d), (e). Pub. L. 90-439 added subsecs. (d) and (e).

1964—Subsec. (a). Pub. L. 88-467 substituted provisions which require the issuer of a security registered pursuant to section 78*l* of this title to file reports with the Commission rather than with the exchange and to furnish the exchange with duplicate originals and prohibit the Commission from requiring the filing of any material contract wholly executed before July 1, 1962 for former provisions which required the issuer of a security registered on a national securities exchange to file certain reports with the exchange and to file duplicates with the Commission.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-210 not applicable to any report by any person with respect to a fiscal year of such person which began before Feb. 5, 1976, see section 308(d)(2) of Pub. L. 94-210, set out as a note under section 80a-3 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-467 effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Effective date, see section 78hh of this title.

Filing of reports in lieu of information required in registration statement, see section 80a-8 of this title.

Issue of securities by electric utility company engaged in interstate commerce, see section 824c of Title 16, Conservation.

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[1] So in original. Probably should be "account".

Registration statements under Securities Act of 1933, application of section to, see section 78o of this title.

Reports of investment companies, filing with Securities and Exchange Commission, see section 80a-29 of this title.

Reports required to be filed with Commission pursuant to this section to be filed by obligor with indenture trustee, see section 77nnn of this title.

Rules and regulations, power of Commission to make, see section 78w of this title.

Securities with unlisted trading privileges, exemption from the operation of this section, see section 78l of this title.

Withdrawal or striking from listing with national security exchange of security as relieving issuer from compliance with this section, see section 78l of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77nnn, 78l, 78n, 78o, 78w, 78hh, 80a-8, 80a-29, 773 of this title; title 16 section 824c.

§ 78n. Proxies

(a) Solicitation of proxies in violation of rules and regulations

It shall be unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 78l of this title.

(b) Giving or refraining from giving proxy in respect of any security carried for account of customer

It shall be unlawful for any member of a national securities exchange, or any broker or dealer registered under this chapter, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to give, or to refrain from giving a proxy, consent, or authorization in respect of any security registered pursuant to section 78l of this title and carried for the account of a customer.

(c) Information to holders of record prior to annual or other meeting

Unless proxies, consents, or authorizations in respect of a security registered pursuant to section 78l of this title are solicited by or on behalf of the management of the issuer from the holders of record of such security in accordance with the rules and regulations prescribed under subsection (a) of this section, prior to any annual or other meeting of the holders of such security, such issuer shall, in accordance with rules and regulations prescribed by the Commission, file with the Commission and transmit to all holders of record of such security information substantially equivalent to the information which would be required to be transmitted if a solicitation were made, but no information shall be required to be filed or transmitted pursuant to this subsection before July 1, 1964.

(d) Tender offer by owner of more than five per centum of class of securities; exceptions

(1) It shall be unlawful for any person, directly or indirectly, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, to make a tender offer for, or a request or invitation for tenders of, any class of any equity security which is registered pursuant to section 78l of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 78l(g)(2)(G) of this title, or any equity security issued by a a closed-end investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 per centum of such class, unless at the time copies of the offer or request or invitation are first published or sent or given to security holders such person has filed with the Commission a statement containing such of the information specified in section 78m(d) of this title, and such additional information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders of such a security shall be filed as a part of such statement and shall contain such of the information contained in such statement as the Commission may by rules and regulations prescribe. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors, and shall be filed with the Commission not later than the time copies of such material are first published or sent or given to security holders. Copies of all statements, in the form in which such material is furnished to security holders and the Commission, shall be sent to the issuer not later than the date such material is first published or sent or given to any security holders.

(2) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for purposes of this subsection.

(3) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(4) Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(5) Securities deposited pursuant to a tender offer or request or invitation for tenders may be withdrawn by or on behalf of the depositor at any time until the expiration of seven days after the time definitive copies of the offer or request or invitation are first published or sent or given to security holders, and at any time after sixty days from the date of the original tender offer or request or invitation, except as the Commission may otherwise prescribe by rules, regulations, or order as necessary or appropriate in the public interest or for the protection of investors.

(6) Where any person makes a tender offer, or request or invitation for tenders, for less than all the outstanding equity securities of a class, and where a greater number of securities is deposited pursuant thereto within ten days after copies of the offer or request or invitation are first published or sent or given to security holders than such person is bound or willing to take up and pay for, the securities taken up shall be taken up as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositor. The provisions of this subsection shall also apply to securities deposited within ten days after notice of an increase in the consideration offered to security holders, as described in paragraph (7), is first published or sent or given to security holders.

(7) Where any person varies the terms of a tender offer or request or invitation for tenders before the expiration thereof by increasing the consideration offered to holders of such securities, such person shall pay the increased consideration to each security holder whose securities are taken up and paid for pursuant to the tender offer or request or invitation for tenders whether or not such securities have been taken up by such person before the variation of the tender offer or request or invitation.

(8) The provisions of this subsection shall not apply to any offer for, or request or invitation for tenders of, any security—

(A) if the acquisition of such security, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, would not exceed 2 per centum of that class;

(B) by the issuer of such security; or

(C) which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

(e) Untrue statement of material fact or omission of fact with respect to tender offer

It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation. The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

(f) Election or designation of majority of directors of issuer by owner of more than five per centum of class of securities at other than meeting of security holders

If, pursuant to any arrangement or understanding with the person or persons acquiring securities in a transaction subject to subsection (d) of this section or subsection (d) of section 78m of this title, any persons are to be elected or designated as directors of the issuer, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the issuer, then, prior to the time any such person takes office as a director, and in accordance with rules and regulations prescribed by the Commission, the issuer shall file with the Commission, and transmit to all holders of record of securities of the issuer who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by subsection (a) or (c) of this section to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders.

(June 6, 1934, ch. 404, title I, § 14, 48 Stat. 895; Aug. 20, 1964, Pub. L. 88-467, § 5, 78 Stat. 569, 570; July 29, 1968, Pub. L. 90-439, § 3, 82 Stat. 455; Dec. 22, 1970, Pub. L. 91-567, §§ 3-5, 84 Stat. 1497.)

References in Text

This chapter, referred to in subsec. (b), in the original read "this title". See References in Text note under section 78a of this title.

The Investment Company Act of 1940, referred to in subsec. (d)(1), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§ 80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables volume.

Amendments

1970—Subsec. (d)(1). Pub. L. 91-567, § 3, included equity securities of an insurance company which would have been required to be registered except for the exemption contained in section 78*l*(g)(2)(G) of this title, and substituted "5 per centum" for "10 per centum".

Subsec. (d)(8). Pub. L. 91-567, § 4, struck out former clause (A) which excluded offers for, or invitations for tenders of, securities proposed to be made by means of a registration statement under the Securities Act of 1933, and redesignated clauses (B) to (D) as (A) to (C).

Subsec. (e). Pub. L. 91-567, § 5, inserted provisions requiring the Commission, for the purposes of the subsection, by rules and regulations to define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

1968—Subsecs. (d) to (f). Pub. L. 90-439 added subsecs. (d) to (f).

1964—Subsec. (a). Pub. L. 88-467, § 5(a), substituted provisions which make it unlawful for any person, in contravention of the Commission's rules and regulations, to solicit, or to permit the use of his name to solicit, proxies in respect of any security registered pursuant to section 78*l* of this title for former provisions which limited the Commission's rulemaking authority to proxies relating to securities listed and registered on a national securities exchange.

Subsec. (b). Pub. L. 88-467, § 5(b), substituted provisions which make it unlawful for members of a national securities exchange and brokers and dealers registered under this chapter, in contravention of such rules as may be prescribed by the Commission, to give, or to refrain from giving proxies, consents, and other authorizations in respect of any security registered under section 78l of this title carried for the account of customers for former provisions which limited the Commission's rulemaking authority only to the giving of proxies in respect to listed securities carried for the account of customers by members of the national securities exchanges and by brokers or dealers who conduct business through the medium of an exchange member, and deleted the reference to brokers and dealers who transacted business through the medium of an exchange member as being now covered by brokers and dealers registered under this chapter.

Subsec. (c). Pub. L. 88-467, § 5(c), added subsec. (c).

Effective Date of 1964 Amendment

Amendment by Pub. L. 88-467 effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c of this title.

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Application to and mailing copies of proxy by indenture trustee to security holders desiring to communicate with other security holders, see section 77lll of this title.

Effective date, see section 78hh of this title.

Exemption of securities with unlisted trading privileges from the operation of this section, see section 78l of this title.

Investment companies, use of mails or instrumentality of interstate commerce to solicit proxies unlawful, see section 80a-20 of this title.

Modification of railroad financial structures, application to, see section 20b of Title 49, Transportation.

Person soliciting proxies by mail or through interstate commerce respecting plan of reorganization, etc., to file copy with Commission, see section 80a-25 of this title.

Reorganization of railroads engaged in interstate commerce, subsec. (a) of this section as inapplicable when action or matter falls within section 205(p) of Title 11, see section 205 of Title 11, Bankruptcy.

Rules and regulations, power of Commission to make, see section 78w of this title.

Section Referred to in Other Sections

This section is referred to in sections 78l, 78hh of this title; title 11 section 205; title 49 section 20b.

§ 78o. Registration and regulation of brokers and dealers

(a) Registration of all persons utilizing exchange facilities to effect transactions; exemptions

(1) It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.

(2) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.

(b) Manner of registration of brokers and dealers

(1) A broker or dealer may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under paragraph (4) of this subsection.

(2)(A) An application for registration of a broker or dealer to be formed or organized may be made by a broker or dealer to which the broker or dealer to be formed or organized is to be the successor. Such application, in such form as the Commission, by rule, may prescribe, shall contain such information and documents concerning the applicant, the successor, and any persons associated with the applicant or the successor, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. The grant or denial of registration to such an applicant shall be in accordance with the procedures set forth in paragraph (1) of this subsection. If the Commission grants such registration, the registration shall terminate on the forty-fifth day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules and regulations as the Commission may prescribe, adopt the application for registration as its own.

(B) Any person who is a broker or dealer solely by reason of acting as a municipal securities dealer or municipal securities broker, who so acts through a separately identifiable department or division, and who so acted in such a manner on June 4, 1975, may, in accordance with such terms and conditions as the Commission, by rule, prescribes as necessary and appropriate in the public interest and for the protection of investors, register such separately identifiable department or division in accordance with this subsection. If any such department or division is so registered, the department or division and not such person himself shall be the broker or dealer for purposes of this chapter.

(C) Within six months of the date of the granting of registration to a broker or dealer, the Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange of which such broker or dealer is a member, shall conduct an inspection of the broker or dealer to determine whether it is operating in conformity with the provisions of this chapter and the rules and regulations thereunder: *Provided, however,* That the Commission may delay such inspection of any class of brokers or dealers for a period not to exceed six months.

(3) Any provision of this chapter (other than section 78e of this title and subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered broker or dealer or any person acting on behalf of such a broker or dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated—

(A) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under this chapter, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

(B) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor which the Commission finds—

(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense;

(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, or fiduciary;

(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities; or

(iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18.

(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, or municipal securities dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

(D) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], this chapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this chapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this subparagraph (E) no person shall be deemed to have failed reasonably to supervise any other person, if—

(i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

(ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

(F) is subject to an order of the Commission entered pursuant to paragraph (6) of this subsection (b) barring or suspending the right of such person to be associated with a broker or dealer.

(5) Pending final determination whether any registration under this subsection shall be re-

voked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered broker or dealer may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered broker or dealer is no longer in existence or has ceased to do business as a broker or dealer, the Commission, by order, shall cancel the registration of such broker or dealer.

(6) The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, or seeking to become associated, with a broker or dealer, or suspend for a period not exceeding twelve months or bar any such person from being associated with a broker or dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of this subsection, has been convicted of any offense specified in subparagraph (B) of said paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of said paragraph (4). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with a broker or dealer is in effect willfully to become, or to be, associated with a broker or dealer without the consent of the Commission, and it shall be unlawful for any broker or dealer to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order.

(7) No registered broker or dealer shall effect any transaction in, or induce the purchase or sale of, any security unless such broker or dealer meets such standards of operational capability and such broker or dealer and all natural persons associated with such broker or dealer meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission shall establish such standards by rules and regulations, which may—

(A) specify that all or any portion of such standards shall be applicable to any class of brokers and dealers and persons associated with brokers and dealers;

(B) require persons in any such class to pass tests prescribed in accordance with such rules and regulations, which tests shall, with respect to any class of partners, officers, or supervisory employees (which latter term may be defined by the Commission's rules and regulations and as so defined shall include branch managers of brokers or dealers) engaged in the management of the broker or dealer, include questions relating to bookkeeping, accounting, internal control over cash and securities, supervision of employees, maintenance of records, and other appropriate matters; and

(C) provide that persons in any such class other than brokers and dealers and partners, officers, and supervisory employees of brokers or dealers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Commission finds appropriate.

The Commission, by rule, may prescribe reasonable fees and charges to defray its costs in carrying out this paragraph, including, but not limited to, fees for any test administered by it or under its direction. The Commission may cooperate with registered securities associations and national securities exchanges in devising and administering tests and may require registered brokers and dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange and to pay such association or exchange reasonable fees or charges to defray the costs incurred by such association or exchange in administering such tests.

(8) In addition to the fees and charges authorized by paragraph (7) of this subsection, each registered broker or dealer not a member of a registered securities association shall pay to the Commission such reasonable fees and charges as may be necessary to defray the costs of the additional regulatory duties required to be performed by the Commission because such broker or dealer effects transactions in securities otherwise than on a national securities exchange of which it is a member and is not a member of a registered securities association. The Commission, by rule, shall establish such fees and charges.

(9) No broker or dealer subject to paragraph (8) of this subsection shall effect any transaction in, or induce the purchase or sale of, any security (otherwise than on a national securities exchange of which it is a member) in contravention of such rules and regulations as the Commission may prescribe designed to promote just and equitable principles of trade to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(10) For the purposes of determining whether a person is subject to a statutory disqualification under section 78f(c)(2), 78*o*–3(g)(2), or 78q-1(b)(4)(B) of this title, the term "Commission" in paragraph (4)(B) of this subsection shall mean "exchange", "association", or "clearing agency", respectively.

(c) Use of manipulative or deceptive devices; contravention of rules and regulations

(1) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member by means of

any manipulative, deceptive, or other fraudulent device or contrivance, and no municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security by means of any manipulative, deceptive, or other fraudulent device or contrivance. The Commission shall, for the purposes of this paragraph, by rules and regulations define such devices or contrivances as are manipulative, deceptive, or otherwise fraudulent.

(2) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member, in connection with which such broker or dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation, and no municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in connection with which such municipal securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation. The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative and such quotations as are fictitious.

(3) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers including, but not limited to, the acceptance of custody and use of customers' securities and the carrying and use of customers' deposits or credit balances. Such rules and regulations shall (A) require the maintenance of reserves with respect to customers' deposits or credit balances, and (B) no later than September 1, 1975, establish minimum financial responsibility requirements for all brokers and dealers.

(4) If the Commission finds, after notice and opportunity for hearing, that any person subject to the provisions of section 78*l* or 78m of this title or subsection (d) of this section or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person to comply with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

(5) No dealer (other than a specialist registered on a national securities exchange) acting in the capacity of market maker or otherwise shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or a municipal security) in contravention of such specified and appropriate standards with respect to dealing as the Commission, by rule, shall prescribe as necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to remove impediments to and perfect the mechanism of a national market system. Under the rules of the Commission a dealer in a security may be prohibited from acting as a broker in that security.

(6) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security, municipal security, commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and for the protection of investors or to perfect or remove impediments to a national system for the prompt and accurate clearance and settlement of securities transactions, with respect to the time and method of, and the form and format of documents used in connection with, making settlements of and payments for transactions in securities, making transfers and deliveries of securities, and closing accounts. Nothing in this paragraph shall be construed (A) to affect the authority of the Board of Governors of the Federal Reserve System, pursuant to section 78g of this title, to prescribe rules and regulations for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, or (B) to authorize the Commission to prescribe rules or regulations for such purpose.

(d) Filing of supplementary and periodic information

Each issuer which has filed a registration statement containing an undertaking which is or becomes operative under this subsection as in effect prior to August 20, 1964, and each issuer which shall after such date file a registration statement which has become effective pursuant to the Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents, and reports as may be required pursuant to section 78m of this title in respect of a security registered pursuant to section 78*l* of this title. The duty to file under this subsection shall be automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 78*l* of this title. The duty to file under this subsection shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such registration statement became effective, if, at the beginning of such fiscal year, the securities of each class to which the registration statement relates are held of record by less than three hundred persons. For the purposes of this subsection, the term "class" shall be construed to include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. Nothing in this subsection shall apply to securities issued by a foreign government or political subdivision thereof.

(e) Compliance with this chapter by members not required to be registered

The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors or to assure equal regulation, may require any member of a national securities exchange not required to register under this section and any person associated with any such member to comply with any provision of this chapter (other than subsection (a) of this section) or the rules or regulations thereunder which by its terms regulates or prohibits any act, practice, or course of business by a "broker or dealer" or "registered broker or dealer" or a "person associated with a broker or dealer," respectively.

(June 6, 1934, ch. 404, title I, § 15, 48 Stat. 895; May 27, 1936, ch. 462, § 3, 49 Stat. 1377; June 25, 1938, ch. 677, § 2, 52 Stat. 1075; Aug. 20, 1964, Pub. L. 88-467, § 6, 78 Stat. 570-574; Dec. 30, 1970, Pub. L. 91-598, § 7(d), 84 Stat. 1653; June 4, 1975, Pub. L. 94-29, § 11, 89 Stat. 121.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(2)(B), (C), (3), (4)(A), (D), (E), and (e), in the original read "this title". See References in Text note under section 78a of this title.

The Securities Act of 1933, referred to in subsecs. (b)(4)(D), (E) and (d), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter 1 (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

The Investment Advisers Act of 1940, referred to in subsec. (b)(4)(D), (E), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§ 80b-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b-20 of this title and Tables volume.

The Investment Company Act of 1940, referred to in subsec. (b)(4)(D), (E), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter 1 (§ 80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables volume.

AMENDMENTS

1975—Subsec. (a). Pub. L. 94-29, § 11(2), required registration with the Commission of all persons utilizing an exchange's facilities to effect transactions.

Subsec. (b). Pub. L. 94-29, § 11(2), expanded coverage to include municipal securities dealers, permitted nonbank municipal securities dealers and brokers to register company departments or divisions conducting municipal securities activities rather than the company of which the department or division is a part, subjected municipal securities and associated persons thereof to the Commission's enforcement and disciplinary powers, updated the list of statutory offenses which bar a person from becoming a broker-dealer or an associated person of a broker-dealer, expanded Commission regulatory control to include all brokers and dealers executing transactions on exchanges of which such brokers and dealers are not members, required any registered broker-dealer who is not a member of a registered securities association to pay the Commission fees imposed by it to defray the costs of the additional regulatory duties to be performed by the Commission, and clarified the power of national securities exchanges, registered securities associations, and registered clearing agencies to make determinations as to whether a person is subject to statutory disqualification.

Subsec. (c)(1). Pub. L. 94-29, § 11(3), expanded the Commission's authority to define devices, contrivances, acts, and practices deemed manipulative, deceptive, and otherwise fraudulent for municipal securities dealers as well as for brokers and dealers.

Subsec. (c)(2). Pub. L. 94-29, § 11(3), expanded the Commission's authority to define quotations deemed to be fictitious for municipal securities dealers as well as for brokers and dealers.

Subsec. (c)(3). Pub. L. 94-29, § 11(3), added requirement that rules and regulations be promulgated no later than Sept. 1, 1975, establishing minimum financial responsibility requirements for all brokers and dealers.

Subsec. (c)(5). Pub. L. 94-29, § 11(4), substituted provisions authorizing the Commission to regulate trading activities of market makers other than specialists registered on a national securities exchange for provisions authorizing the Commission summarily to suspend trading, otherwise than on a national securities exchange, in any security other than an exempted security for a period not exceeding 10 days if the public interest and the protection of investors so requires.

Subsec. (c)(6). Pub. L. 94-29, § 11(5), added subsec. (c)(6).

Subsec. (e). Pub. L. 94-29, § 11(6), added subsec. (e).

1970—Subsec. (c)(3). Pub. L. 91-598 extended Commission's rulemaking power to both the exchange and the over-the-counter markets, deleting "otherwise than on a national securities exchange" preceding "in contravention of such rules and regulations" and substituting "shall prescribe" for "may prescribe" and provided for safeguards with respect to the related practices of brokers and dealers, including customers' securities and customers' deposits or credit balances, and maintenance of reserves with respect to such deposits or credit balances.

1964—Subsec. (a). Pub. L. 88-467, § 6(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(1). Pub. L. 88-467, § 6(b), designated the first par. as (1) and substituted therein "persons associated with such broker or dealer" for "person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such broker or dealer,".

Subsec. (b)(2). Pub. L. 88-467, § 6(b), designated the second par. as (2) and substituted therein "associated with the applicant" for "directly or indirectly controlling or controlled by, or under direct or indirect common control with, the applicant".

Subsec. (b)(3). Pub. L. 88-467, § 6(b), designated the third par. as (3) and substituted therein "effective date of the registration" for "effective date thereof".

Subsec. (b)(4). Pub. L. 88-467, § 6(b), added par. (4).

Subsec. (b)(5). Pub. L. 88-467, § 6(b), designated the first sentence of the fourth par, as (5), provided for censure and for suspension for period not exceeding twelve months, substituted the language "that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated" for "that (1) such broker or dealer whether prior or subsequent to becoming such, or (2) any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker or dealer, whether prior or subsequent to becoming such", substituted in clause (A) the provision respecting false or misleading statements in any report required to, be filed with the Commission for such statements in any document supplemental to application for registration and inserted in such clause (A) the material fact omission provision, designated existing provisions of clause (B) as items (i) and (ii), included in item (ii) the business of investment broker, and added items (iii) and (iv), provided in clause (C) for enjoyment from acting as an investment adviser, underwriter, broker, or dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, made clause (D) applicable to violations of the Investment Advisers Act of 1940 and the Investment Company Act of 1940, and added clauses (E) and (F).

Subsec. (b)(6). Pub. L. 88-467, § 6(b), designated the second through the fifth sentences of the fourth par. as (6) and, in the provision constituting the first sentence of par. (6) substituted "any registration under this subsection" for "any such registration" and inserted "(which may consist solely of affidavits and oral argument)" following "opportunity for hearing".

Subsecs. (b)(7) to (10). Pub. L. 88-467, § 6(b), added pars. (7) to (10).

Subsecs. (c)(4), (5). Pub. L. 88-467, § 6(c), added pars. (4) and (5).

Subsec. (d). Pub. L. 88-467, § 6(d), substituted provisions which require every issuer filing a registration statement under the Securities Act of 1933 to file for the fiscal year in which the registration statement becomes effective such reports as may be required by the Commission under section 78m of this title and provide for suspension of duty to file reports for any later fiscal years if at the beginning of such fiscal year the securities to which the registration statement relates are held of record by less than three hundred persons for former provisions which required the registration statement filed under the Securities Act to contain an undertaking if the value of the securities offered plus the value of other outstanding securities of the same class amounted to $2,000,000 or more and suspended the duty to file if the value of securities outstanding was reduced to less than $1,000,000 or the issuer had become subject to an equivalent reporting requirement and deleted "or to any other security which the Commission may by rules and regulations exempt as not comprehended within the purposes of this subsection" following "political subdivision thereof".

1938—Subsec. (c). Act June 25, 1938, added pars. (2) and (3) thereto.

1936—Act May 27, 1936, amended section generally.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, except for amendment of subsec. (a) by Pub. L. 94-29 which is effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-467 of subsec. (a) of this section effective July 1, 1964, and of subsecs. (b), (c)(4), (5), and (d) of this section effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Accounts, records, and reports by brokers or dealers registered pursuant to this section, see section 78q of this title.

Brokers and dealers deemed registered, see section 78o-1 of this title.

Contracts, validity of, see section 78cc of this title.

Copies or extracts of periodic reports, filing with Securities and Exchange Commission, see section 80a-29 of this title.

Effective date, see sections 78hh, 78hh-1 of this title.

Filing of reports in lieu of information required in registration statement, see section 80a-8 of this title.

Forfeiture for failure to file information, etc., see section 78ff of this title.

Liability for misleading statements in undertaking, see section 78r of this title.

Liability prior to act unextinguished, see section 78o-2 of this title.

Mandamus to comply with provisions of undertaking in registration statement, see section 78u of this title.

Over-the-counter brokers' and dealers' associations, refusal of membership when registration denied or revoked under this section, see section 78o-3 of this title.

Reports, required to be filed with Commission pursuant to subsec. (d) of this section, to be filed by obligor with indenture trustee, see section 77nnn of this title.

Review by Commission of actions with respect to delegation of its functions, see section 78d-1 of this title.

Rules and regulations, power of Commission to make, see section 78w of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77nnn, 78c, 78l, 78o-1, 78o-2, 78o-4, 78r, 78s, 78u, 78y, 78cc, 78ff, 78hh, 78hh-1, 78ccc, 78lll, 80a-8, 80a-22, 80a-29, 80a-35, 773 of this title.

§ 78o-1. Brokers deemed to be registered

All brokers and dealers for whom registration was in effect on May 27, 1936 in accordance with rules and regulations of the Commission prescribed pursuant to section 78o of this title shall be deemed to be registered pursuant to said section.

(May 27, 1936, ch. 462, § 10, 49 Stat. 1380.)

CODIFICATION

Section was not enacted as a part of the Securities Exchange Act of 1934 which comprises this chapter.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Effective date, see section 78hh-1 of this title.

Rules and regulations, power of Commission to make, see section 78w of this title.

§ 78o-2. Liabilities arising prior to amendment unaffected

Nothing in this Act shall be deemed to extinguish any liability which may have arisen prior to the effective date of this Act by reason of any violation of section 78o of this title or of any rule or regulation thereunder.

(May 27, 1936, ch. 462, § 11, 49 Stat. 1380.)

REFERENCES IN TEXT

This Act, referred to in text, is act May 27, 1936, ch. 462, 49 Stat. 1375. Such Act enacted this section and sections 78l-1, 78o-1, and 78hh-1 of this title, and amended sections 78l, 78o, 78q, 78r, 78t, 78u, 78w, and 78ff of this title.

Effective date of this Act, referred to in text, is July 1, 1934. See section 78hh-1 of this title.

CODIFICATION

Section was not enacted as a part of the Securities Exchange Act of 1934 which comprises this chapter.

§ 78o-3. Registered securities associations

(a) Registration; application

An association of brokers and dealers may be registered as a national securities association pursuant to subsection (b) of this section, or as an affiliated securities association pursuant to subsection (d) of this section, under the terms and conditions hereinafter provided in this section and in accordance with the provisions of section 78s(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the association and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) Determinations by Commission requisite to registration of applicant as national securities association

An association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that—

(1) By reason of the number and geographical distribution of its members and the scope of their transactions, such association will be able to carry out the purposes of this section.

(2) Such association is so organized and has the capacity to be able to carry out the purposes of this chapter and to comply, and (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of this chapter, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the association.

(3) Subject to the provisions of subsection (g) of this section, the rules of the association provide that any registered broker or dealer may become a member of such association and any person may become associated with a member thereof.

(4) The rules of the association assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the association, broker, or dealer.

(5) The rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

(6) The rules of the association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the administration of the association.

(7) The rules of the association provide that (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of any provision of this chapter, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

(8) The rules of the association are in accordance with the provisions of subsection (h) of this section, and, in general, provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the association of any person with respect to access to services offered by the association or a member thereof.

(9) The rules of the association do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(10) The requirements of subsection (c) of this section, insofar as these may be applicable, are satisfied.

(11) The rules of the association include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

(c) National association rules; provision for registration of affiliated securities association

The Commission may permit or require the rules of an association applying for registration pursuant to subsection (b) of this section, to provide for the admission of an association registered as an affiliated securities association pursuant to subsection (d) of this section, to participation in said applicant association as an affiliate thereof, under terms permitting such powers and responsibilities to such affiliate, and under such other appropriate terms and conditions, as may be provided by the rules of said applicant association, if such rules appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors and to carry out the purposes of this section. The duties and powers of the Commission with respect to any national securities association or any affiliated securities association shall in no way be limited by reason of any such affiliation.

(d) Registration as affiliated association; prerequisites; association rules

An applicant association shall not be registered as an affiliated securities association unless it appears to the Commission that—

(1) such association, notwithstanding that it does not satisfy the requirements set forth in paragraph (1) of subsection (b) of this section, will, forthwith upon the registration thereof, be admitted to affiliation with an association registered as a national securities association pursuant to subsection (b) of this section, in the manner and under the terms and conditions provided by the rules of said national securities association in accordance with subsection (c) of this section; and

(2) such association and its rules satisfy the requirements set forth in paragraphs (2) to (10), inclusive, and paragraph (12), of subsection (b) of this section; except that in the case of any such association any restrictions upon membership therein of the type authorized by paragraph (3) of subsection (b) of this section shall not be less stringent than in the case of the national securities association with which such association is to be affiliated.

(e) Dealings with nonmember professionals

(1) The rules of a registered securities association may provide that no member thereof shall deal with any nonmember professional (as defined in paragraph (2) of this subsection) except at the same prices, for the same commissions or fees, and on the same terms and conditions as are by such member accorded to the general public.

(2) For the purposes of this subsection, the term "nonmember professional" shall include (A) with respect to transactions in securities other than municipal securities, any registered broker or dealer who is not a member of any registered securities association, except such a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, and commercial bills, and (B) with respect to transactions in municipal securities, any municipal securities dealer (other than a bank or division or department of a bank) who is not a member of any registered securities association and any municipal securities broker who is not a member of any such association.

(3) Nothing in this subsection shall be so construed or applied as to prevent (A) any member of a registered securities association from granting to any other member of any registered securities association any dealer's discount, allowance, commission, or special terms, in connection with the purchase or sale of securities, or (B) any member of a registered securities association or any municipal securities dealer which is a bank or a division or department of a bank from granting to any member of any registered securities association or any such municipal securities dealer any dealer's discount, allowance, commission, or special terms in connection with the purchase or sale of municipal securities: *Provided, however,* That the granting of any such discount, allowance, commission, or special terms in connection with the purchase or sale of municipal securities shall be subject to rules of the Municipal Securities Rulemaking Board adopted pursuant to section 78o-4(b)(2)(K) of this title.

(f) Exempt securities

Nothing in this section shall be construed to apply with respect to any transaction by a broker or dealer in any exempted security.

(g) Denial of membership

(1) A registered securities association shall deny membership to any person who is not a registered broker or dealer.

(2) A registered securities association may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection of investors shall, deny membership to any registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory disqualification. A registered securities association shall file notice with the Commission not less than thirty days prior to admitting any registered broker or dealer to membership or permitting any person to become associated with a member, if the association knew, or in the exercise of reasonable care should have known, that such broker or dealer or person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3)(A) A registered securities association may deny membership to, or condition the membership of, a registered broker or dealer if (i) such broker or dealer does not meet such standards of financial responsibility or operational capability or such broker or dealer or any natural person associated with such broker or dealer does not meet such standards of training, experience, and competence as are prescribed by the rules of the association or (ii) such broker or dealer or person associated with such broker or dealer has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade. A registered securities association may examine and verify the qualifications of an applicant to become a member and the natural persons associated with such an applicant in accordance with procedures established by the rules of the association.

(B) A registered securities association may bar a natural person from becoming associated with a member or condition the association of a natural person with a member if such natural person (i) does not meet such standards of training, experience, and competence as are prescribed by the rules of the association or (ii) has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade. A registered securities association may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the association and require a natural person associated with a member, or any class of such natural persons, to be registered with the association in accordance with procedures so established.

(C) A registered securities association may bar any person from becoming associated with a member if such person does not agree (i) to supply the association with such information with respect to its relationship and dealings with the member as may be specified in the rules of the association and (ii) to permit examination of its books and records to verify the accuracy of any information so supplied.

(4) A registered securities association may deny membership to a registered broker or dealer not engaged in a type of business in which the rules of the association require members to be engaged: *Provided, however,* That no registered securities association may deny membership to a registered broker or dealer by reason of the amount of such type of business done by such broker or dealer or the other types of business in which he is engaged.

(h) Discipline of registered securities association members and persons associated with members; summary proceedings

(1) In any proceeding by a registered securities association to determine whether a member or person associated with a member should be disciplined (other than a summary proceeding pursuant to paragraph (3) of this subsection) the association shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record. A determination by the association to impose a disciplinary sanction shall be supported by a statement setting forth—

(A) any act or practice in which such member or person associated with a member has been found to have engaged, or which such member or person has been found to have omitted;

(B) the specific provision of this chapter, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the association which any such act or practice, or omission to act, is deemed to violate; and

(C) the sanction imposed and the reason therefor.

(2) In any proceeding by a registered securities association to determine whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the association or a member thereof (other than a summary proceeding pursuant to paragraph (3) of this subsection), the association shall notify such person of and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. A determination by the association to deny membership, bar a person from becoming associated with a member, or prohibit or limit a person with respect to access to services offered by the association or a member thereof shall be supported by a statement setting forth the specific grounds on which the denial, bar, or prohibition or limitation is based.

(3) A registered securities association may summarily (A) suspend a member or person associated with a member who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization, (B) suspend a member who is in such financial or operating difficulty that the association determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the association, or (C) limit or prohibit any person with respect to access to services offered by the association if subparagraph (A) or (B) of this paragraph is applicable to such person or, in the case of a person who is not a member, if the association determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the association. Any person aggrieved by any such summary action shall be promptly afforded an opportunity for a hearing by the association in accordance with the provisions of paragraph (1) or (2) of this subsection. The Commission, by order, may stay any such summary action on its own motion or upon application by any person aggrieved thereby, if the Commission determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and the protection of investors.

(June 6, 1934, ch. 404, title I, § 15A, as added June 25, 1938, ch. 677, § 1, 52 Stat. 1070, and amended Aug. 20, 1964, Pub. L. 88-467, § 7, 78 Stat. 574-578; June 4, 1975, Pub. L. 94-29, § 12, 89 Stat. 127.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(2), (6), (7), (9) and (h)(1)(B), in the original read "this title". See References in Text note set out under section 78a of this title.

Paragraph (12), of subsection (b) of this section, referred to in subsec. (d)(2), was omitted in the general amendment of subsec. (b) by Pub. L. 94-29, and its provisions are now covered by par. (11) of subsec. (b).

AMENDMENTS

1975—Subsec. (a). Pub. L. 94-29, § 12(2), struck out "with the Commission" following "registered", inserted reference to section 78s(a) of this title, substituted provisions covering an application for registration in the form prescribed by Commission rule containing the rules of the association and such other information and documents as the Commission prescribes as necessary or appropriate in the public interest or for the protection of investors for provisions covering a statement in the form prescribed by the Commission setting forth specified information and accompanied by specified documents, and struck out provision that registration not be construed as a waiver of constitutional rights or as a waiver of the right to contest the validity of Commission rules or regulations.

Subsec. (b). Pub. L. 94-29, § 12(2), generally amended subsec. (b) to conform its provisions concerning the registration and regulation of national and affiliated securities associations to those covering the registration and regulation of national securities exchanges contained in section 78f of this title and added provisions necessary to accommodate the creation of the Municipal Securities Rulemaking Board and to implement its purposes.

Subsec. (e). Pub. L. 94-29, §12(3), redesignated former subsec. (i) as (e) and in subsec. (e) as so redesignated substituted "nonmember professional" for "nonmember broker or dealer" in par. (1), substituted "term 'nonmember professional' shall include (A) with respect to transactions in securities other than municipal securities, any registered broker or dealer who is not a member of any registered securities association, except such a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, and commercial bills" for "term 'nonmember broker or dealer' shall include any broker or dealer who makes use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security otherwise than on a national securities exchange, who is not a member of any registered securities association, except a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, or commercial bills" and added cl. (B) in par. (2), and, in par. (3), designated existing provisions as cl. (A) and added cl. (B). Former subsec. (e), covering the grant and denial of registration and the revocation of affiliated association registration, was deleted. See section 78s of this title.

Subsec. (f). Pub. L. 94-29, §12(3), redesignated former subsec. (m) as (f). Former subsec. (f), covering withdrawal from registration, was deleted. See section 78s of this title.

Subsec. (g). Pub. L. 94-29, §12(3), (4), added subsec. (g). Former subsec. (g), covering review by the Commission of adverse actions against association members and stays of such actions, was deleted. See section 78s of this title.

Subsec. (h). Pub. L. 94-29, §12(3), (4), added subsec. (h). Former subsec. (h), covering the Commission's action upon findings, was deleted. See sections 78s of this title.

Subsec. (i). Pub. L. 94-29, §12(3), redesignated former subsec. (i) as (e) and amended subsec. (e) as so redesignated.

Subsecs. (j) to (*l*). Pub. L. 94-29, §12(3), struck out subsecs. (j) to (*l*) which covered the filing of changes or additions to association rules and current information, the abrogation and alteration of association rules and supplements to association rules, the suspension of an association or its members, the revocation of registration, the expulsion of members, and the removal of officers or directors. See section 78s of this title.

Subsec. (m). Pub. L. 94-29, §12(3), redesignated former subsec. (m) as (f).

Subsec. (n). Pub. L. 94-29, §12(3), struck out subsec. (n) which directed that the provisions of this section prevail in the event of any conflict between this section and any other law of the United States in force on June 25, 1938.

1964—Subsecs. (b)(1), (2). Pub. L. 88-467, §7(a)(1), substituted a period for the semicolon at the end of pars. (1) and (2).

Subsec. (b)(3). Pub. L. 88-467, §7(a)(1), (2), substituted a period for the semicolon at the end of the paragraph, deleted "of" preceding "any means", substituted "paragraph (4) or (5) of this subsection, or a rule of the association permitted under this paragraph. The rules" for "paragraph (4) of this subsection: *Provided*, That the rules", and added provision authorizing a registered securities association to adopt rules under which it might exclude from membership persons who had been suspended or expelled from a national securities exchange or who were barred or suspended from being associated with all brokers or dealers who are members of such an exchange for violation of exchange rules.

Subsec. (b)(4). Pub. L. 88-467, §7(a)(1), (3), substituted a period for the semicolon at the end of the paragraph, deleted from the text preceding clause (A) the language "or (2) any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker or dealer, whether prior or subsequent to becoming such", inserted in clause (A) the words "or has been and is barred or suspended from being associated with all brokers or dealers which are members of such exchange", inserted in clause (B) provision for suspension for period not exceeding twelve months or barring or suspending the broker or dealer from being associated with a broker or dealer, inserted at the beginning of clause (C) "whether prior or subsequent to becoming a broker or dealer," (derived from former clause (1) of this paragraph) and added to clause (C) the provision conferring jurisdiction upon the Commission, an exchange, or a registered securities association to determine whether an individual is the cause of disciplinary action taken by them against a broker or a dealer, and added clause (D).

Subsec. (b)(5). Pub. L. 88-467, §7(a)(4), added par. (5). Former par. (5) redesignated par. (6).

Subsecs. (b)(6) to (8). Pub. L. 88-467, §7(a)(1), (4), substituted periods for semicolons at the end of the paragraphs, and redesignated former pars. (5) to (7) as pars. (6) to (8), respectively. Former pars. (6) to (8) redesignated pars. (7) to (9).

Subsec. (b)(9). Pub. L. 88-467, §7(a)(1), (4), (5), substituted a period for a semicolon at the end of the paragraph, redesignated former par. (8) as par. (9), and inserted the words "and persons associated with its members" and "or being suspended or barred from being associated with all members,", respectively. Former par. (9) redesignated par. (10).

Subsec. (b)(10). Pub. L. 88-467, §7(a)(4), (6), redesignated former par. (9) as par. (10), and inserted in the paragraph preceding clause (A) the words "and persons associated with members", "or the barring of any person from being associated with a member", "or other persons", and "or person", substituted a period for a comma at the end of clauses (A) and (B) and a period for ", and" at the end of clause (C), inserted in clause (A) the words "or other person" in two instances and in the concluding sentence "or whether any person shall be barred from being associated with a member", "or person", "or bar" in two instances, and substituted a period for "; and", respectively. Former par. (10) redesignated par. (11).

Subsec. (b)(11). Pub. L. 88-467, §7(a)(4), redesignated former par. (10) as par. (11).

Subsec. (b)(12). Pub. L. 88-467, §7(a)(7), added par. 12.

Pub. L. 88-467, §7(a)(7), added the effective date provisions for application of subsec. (b) prior to its amendment and since its amendment with July 1, 1964 as the guiding date.

Subsec. (d)(2). Pub. L. 88-467, §7(b), substituted "(10)" for "(9)" and inserted "and paragraph (12)," following ", inclusive,".

Subsec. (g). Pub. L. 88-467, §7(c), provided that disciplinary action taken by a registered securities association against a person associated with a member will be reviewable by the Commission, shortened the period for review by an aggrieved person from sixty days or within such longer period as the Commission may determine to thirty days or within such longer period as the Commission may determine, authorized the Commission, after notice and opportunity for hearing on the question of stay to order no stay of action of a registered securities association pending the Commission's decision on review, and authorized the Commission to limit the hearing on the question of stay to affidavits and oral arguments.

Subsec. (h). Pub. L. 88-467, §7(d), made the procedures and the Commission's authority in reviewing disciplinary action by a registered securities association against members and in reviewing association action in denying membership also applicable to Commission review of disciplinary action against persons associated with members and to the barring by an association of any person from being associated with a member.

Subsec. (k)(2). Pub. L. 88-467, § 7(e), inserted ", or with such modifications of such alteration or supplement as it deems necessary" following "in the manner theretofore requested", redesignated clauses (1) to (4) as clauses (A) to (D), and inserted in clause (A) "or the barring from being associated with a member" and "or persons associated with members, or the qualifications required for members or natural persons associated with members or any class thereof".

Subsec. (*l*). Pub. L. 88-467, § 7(f), substituted a period for a semicolon at the end of par. (1) and inserted in par. (2) preceding clause (A) ", or to suspend for a period not exceeding twelve months or to bar any person from being associated with a member thereof,".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-467 effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Distribution, redemption and repurchase of securities, rules by securities association for, see section 80a-22 of this title.

Rules and regulations, power of Commission to make, see section 78w of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78*o*, 78s, 78y, 78iii, 78*lll*, 80a-22 of this title.

§ 78*o*-4. Municipal securities

(a) Registration of municipal securities dealers

(1) It shall be unlawful for any municipal securities dealer (other than one registered as a broker or dealer under section 78*o* of this title) to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security unless such municipal securities dealer is registered in accordance with this subsection.

(2) A municipal securities dealer may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such municipal securities dealer and any persons associated with such municipal securities dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant the registration of a municipal securities dealer if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (c) of this section.

(3) Any provision of this chapter (other than section 78e of this title or paragraph (1) of this subsection) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered municipal securities dealer or any person acting on behalf of such municipal securities dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(4) The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any broker, dealer, or municipal securities dealer or class of brokers, dealers, or municipal securities dealers from any provision of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section.

(b) Municipal Securities Rulemaking Board; rules and regulations

(1) Not later than one hundred twenty days after June 4, 1975, the Commission shall establish a Municipal Securities Rulemaking Board (hereinafter in this section referred to as the "Board"), to be composed initially of fifteen members appointed by the Commission, which shall perform the duties set forth in this section. The initial members of the Board shall serve as members for a term of two years, and shall consist of (A) five individuals who are not associated with any broker, dealer, or municipal securities dealer, at least one of whom shall be representative of investors in municipal securities, and at least one of whom shall be representative of issuers of municipal securities (which members are hereinafter referred to as "public representatives"); (B) five individuals who are associated with and representative of municipal securities brokers and municipal securities dealers which are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as "broker-dealer representatives"); and (C) five individuals who are associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as "bank representatives"). Prior to the expiration of the terms of office of the initial members of the Board, an election

shall be held under rules adopted by the Board (pursuant to subsection (b)(2)(B) of this section) of the members to succeed such initial members.

(2) The Board shall propose and adopt rules to effect the purposes of this chapter with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers. (Such rules are hereinafter collectively referred to in this chapter as "rules of the Board".) The rules of the Board, as a minimum, shall:

(A) provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security unless such municipal securities broker or municipal securities dealer meets such standards of operational capability and such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meet such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors. In connection with the definition and application of such standards the Board may—

(i) appropriately classify municipal securities brokers and municipal securities dealers (taking into account relevant matters, including types of business done, nature of securities other than municipal securities sold, and character of business organization), and persons associated with municipal securities brokers and municipal securities dealers;

(ii) specify that all or any portion of such standards shall be applicable to any such class;

(iii) require persons in any such class to pass tests administered in accordance with subsection (c)(7) of this section; and

(iv) provide that persons in any such class other than municipal securities brokers and municipal securities dealers and partners, officers, and supervisory employees of municipal securities brokers or municipal securities dealers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Board finds appropriate.

(B) establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of municipal securities brokers and municipal securities dealers. Such rules shall provide that the membership of the Board shall at all times be equally divided among public representatives, broker-dealer representatives, and bank representatives, and that the public representatives shall be subject to approval by the Commission to assure that no one of them is associated with any broker, dealer, or municipal securities dealer and that at least one is representative of investors in municipal securities and at least one is representative of issuers of municipal securities. Such rules shall also specify the term members shall serve and may increase the number of members which shall constitute the whole Board provided that such number is an odd number.

(C) be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, municipal securities brokers, or municipal securities dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by municipal securities brokers or municipal security dealers, to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this chapter or the securities or the administration of the Board, or to impose any burden or competition not necessary or appropriate in furtherance of the purposes of this chapter.

(D) if the Board deems appropriate, provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities: *Provided, however,* That no person other than a municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer may be compelled to submit to such arbitration except at his instance and in accordance with section 78cc of this title.

(E) provide for the periodic examination in accordance with subsection (c)(7) of this section of municipal securities brokers and municipal securities dealers to determine compliance with applicable provisions of this chapter, the rules and regulations thereunder, and the rules of the Board. Such rules shall specify the minimum scope and frequency of such examinations and shall be designed to avoid unnecessary regulatory duplication or undue regulatory burdens for any such municipal securities broker or municipal securities dealer.

(F) include provisions governing the form and content of quotations relating to municipal securities which may be distributed or published by any municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

(G) prescribe records to be made and kept by municipal securities brokers and municipal securities dealers and the periods for which such records shall be preserved.

(H) define the term "separately identifiable department or division", as that term is used in section 78c(a)(30) of this title, in accordance with specified and appropriate standards to assure that a bank is not deemed to be engaged in the business of buying and selling municipal securities through a separately identifiable department or division unless such department or division is organized and administered so as to permit independent examination and enforcement of applicable provisions of this chapter, the rules and regulations thereunder, and the rules of the Board. A separately identifiable department or division of a bank may be engaged in activities other than those relating to municipal securities.

(I) provide for the operation and administration of the Board, including the selection of a Chairman from among the members of the Board, the compensation of the members of the Board, and the appointment and compensation of such employees, attorneys, and consultants as may be necessary or appropriate to carry out the Board's functions under this section.

(J) provide that each municipal securities broker and each municipal securities dealer shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges.

(K) establish the terms and conditions under which any municipal securities dealer may sell, or prohibit any municipal securities dealer from selling, any part of a new issue of municipal securities to a municipal securities investment portfolio during the underwriting period.

(3) Nothing in this section shall be construed to impair or limit the power of the Commission under this chapter.

(c) Discipline of municipal securities dealers; censure; suspension or revocation of registration; other sanctions; investigations

(1) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in contravention of any rule of the Board.

(2) The Commission, by order, shall censure, place limitations on the activities, functions, or operations, suspend for a period not exceeding twelve months, or revoke the registration of any municipal securities dealer, if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, denial, suspension, or revocation, is in the public interest and that such municipal securities dealer has committed or omitted any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

(3) Pending final determination whether any registration under this section shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered municipal securities dealer may, upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered municipal securities dealer is no longer in existence or has ceased to do business as a municipal securities dealer, the Commission, by order, shall cancel the registration of such municipal securities dealer.

(4) The Commission, by order, shall censure any person associated, or seeking to become associated with, a municipal securities dealer or suspend for a period not exceeding twelve months or bar any such person from being associated with a municipal securities dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 78o(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4). It shall be unlawful for any person as to whom an order entered pursuant to this paragraph or paragraph (5) of this subsection suspending or barring him from being associated with a municipal securities dealer is in effect willfully to become, or to be, associated with a municipal securities dealer without the consent of the Commission, and it shall be unlawful for any municipal securities dealer to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such municipal securities dealer knew, or, in the exercise of reasonable care should have known, of such order.

(5) With respect to any municipal securities dealer for which the Commission is not the appropriate regulatory agency, the appropriate regulatory agency for such municipal securities dealer may sanction any such municipal securities dealer in the manner and for the reasons specified in paragraph (2) of this subsection and any person associated with such municipal securities dealer in the manner and for the reasons specified in paragraph (4) of this subsection. In addition, such appropriate regulatory agency may, in accordance with section 1818 of title 12, enforce compliance by such municipal securities dealer or any person associated with such municipal securities dealer with the provisions of this section, section 78q of this title, the rules of the Board, and the rules of the Commission pertaining to municipal securities dealers, persons associated with municipal securities dealers, and transactions in municipal securities. For purposes of the preceding sen-

tence, any violation of any such provision shall constitute adequate basis for the issuance of any order under section 1818(b) or 1818(c) of title 12, and the customers of any such municipal securities dealer shall be deemed to be "depositors" as that term is used in section 1818(c) of title 12. Nothing in this paragraph shall be construed to affect in any way the powers of such appropriate regulatory agency to proceed against such municipal securities dealer under any other provision of law.

(6)(A) The Commission, prior to the entry of an order of investigation, or commencement of any proceedings, against any municipal securities dealer, or person associated with any municipal securities dealer, for which the Commission is not the appropriate regulatory agency, for violation of any provision of this section, section 78o(c)(1) or 78o(c)(2) of this title, any rule or regulation under any such section, or any rule of the board, shall (i) give notice to the appropriate regulatory agency for such municipal securities dealer of the identity of such municipal securities dealer or person associated with such municipal securities dealer and the nature of and basis for such proposed action and (ii) consult with such appropriate regulatory agency concerning the effect of such proposed action on sound banking practices and the feasibility and desirability of coordinating such action with any proceeding or proposed proceeding by such appropriate regulatory agency against such municipal securities dealer or associated person.

(B) The appropriate regulatory agency for a municipal securities dealer (if other than the Commission), prior to the entry of an order of investigation, or commencement of any proceedings, against such municipal securities dealer or person associated with such municipal securities dealer, for violation of any provision of this section, the rules of the Board, or the rules or regulations of the Commission pertaining to municipal securities dealers, persons associated with municipal securities dealers, or transactions in municipal securities shall (i) give notice to the Commission of the identity of such municipal securities dealer or person associated with such municipal securities dealer and the nature of and basis for such proposed action and (ii) consult with the Commission concerning the effect of such proposed action on the protection of investors and the feasibility and desirability of coordinating such action with any proceeding or proposed proceeding by the Commission against such municipal securities dealer or associated person.

(C) Nothing in this paragraph shall be construed to impair or limit (other than by the requirement of prior consultation) the power of the Commission or the appropriate regulatory agency for a municipal securities dealer to initiate any action of a class described in this paragraph or to affect in any way the power of the Commission or such appropriate regulatory agency to initiate any other action pursuant to this chapter or any other provision of law.

(7)(A) Tests required pursuant to subsection (b)(2)(A)(iii) of this section shall be administered by or on behalf of and periodic examinations pursuant to subsection (b)(2)(E) of this section shall be conducted by—

(i) a registered securities association, in the case of municipal securities brokers and municipal securities dealers who are members of such association; and

(ii) the appropriate regulatory agency for any municipal securities broker or municipal securities dealer, in the case of all other municipal securities brokers and municipal securities dealers.

(B) A registered securities association shall make a report of any examination conducted pursuant to subsection (b)(2)(E) of this section and promptly furnish the Commission a copy thereof and any data supplied to it in connection with such examination. Subject to such limitations as the Commission, by rule, determines to be necessary or appropriate in the public interest or for the protection of investors, the Commission shall, on request, make available to the Board a copy of any report of an examination of a municipal securities broker or municipal securities dealer made by or furnished to the Commission pursuant to this paragraph or section 78q(c)(3) of this title.

(8) The Commission is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise, in furtherance of the purposes of this chapter, to remove from office or censure any member or employee of the Board, who, the Commission finds, on the record after notice and opportunity for hearing, has willfully (A) violated any provision of this chapter, the rules and regulations thereunder, or the rules of the Board or (B) abused his authority.

(d) Issuance of municipal securities

(1) Neither the Commission nor the Board is authorized under this chapter, by rule or regulation, to require any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of such securities.

(2) The Board is not authorized under this chapter to require any issuer of municipal securities, directly or indirectly through a municipal securities broker or municipal securities dealer or otherwise, to furnish to the Board or to a purchaser or a prospective purchaser of such securities any application, report, document, or information with respect to such issuer: *Provided, however,* That the Board may require municipal securities brokers and municipal securities dealers to furnish to the Board or purchasers or prospective purchasers of municipal securities applications, reports, documents, and information with respect to the issuer thereof which is generally available from a source other than such issuer. Nothing in this paragraph shall be construed to impair or limit the power of the Commission under any provision of this chapter.

(June 6, 1934, ch. 404, title I, § 15B, as added June 4, 1975, Pub. L. 94-29, § 13, 89 Stat. 131.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3), (b)(2), (3), (c)(6)(C), (8), and (d), in the original read "this title". See References in Text note set out under section 78a of this title.

EFFECTIVE DATE

Section effective June 4, 1975, except for subsec. (a) which is effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78*o*-3 of this title.

§ 78p. Directors, officers, and principal stockholders

(a) Filing of statement of all ownership of securities of issuer by owner of more than ten percentum of any class of security

Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security (other than an exempted security) which is registered pursuant to section 78*l* of this title, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 78*l*(g) of this title, or within ten days after he becomes such beneficial owner, director, or officer, a statement with the Commission (and, if such security is registered on a national securities exchange, also with the exchange) of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission (and if such security is registered on a national securities exchange, shall also file with the exchange), a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

(b) Profits from purchase and sale of security within six months

For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection.

(c) Conditions for sale of security by beneficial owner, director, or officer

It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such issuer (other than an exempted security), if the person selling the security or his principal (1) does not own the security sold, or (2) if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this subsection if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

(d) Securities held in investment account, transactions in ordinary course of business, and establishment of primary or secondary market

The provisions of subsection (b) of this section shall not apply to any purchase and sale, or sale and purchase, and the provisions of subsection (c) of this section shall not apply to any sale, of an equity security not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on a national securities exchange or an exchange exempted from registration under section 78e of this title) for such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

(e) Application of section to foreign or domestic arbitrage transactions

The provisions of this section shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the Commission may adopt in order to carry out the purposes of this section.

(June 6, 1934, ch. 404, title I, § 16, 48 Stat. 896; Aug. 20, 1964, Pub. L. 88-467, § 8, 78 Stat. 579.)

AMENDMENTS

1964—Subsec. (a). Pub. L. 88-467, § 8(a), substituted "registered pursuant to section 78*l* of this title" for "registered on a national securities exchange", "Commission (and, if such security is registered on a national securities exchange, also with the exchange)" for "exchange (and a duplicate original thereof with the Commission)", "a change" for "any change", and "Commission (and if such security is registered on a national securities exchange, shall also file with the exchange) a statement" for "exchange a statement (and a duplicate original thereof with the Commission)", and inserted "on a national securities exchange or by the effective date of a registration statement filed pursuant to section 78*l*(g) of this title" following "registration of such security".

Subsec. (d). Pub. L. 88-467, § 8(b), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 88-467, § 8(b), redesignated former subsec. (d) as (e).

Effective Date of 1964 Amendment

Amendment by Pub. L. 88-467 effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c of this title.

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Effective date, see section 78hh of this title.

Persons owning securities or affiliated with closed-end company, duties and liabilities of, see section 80a-29 of this title.

Rules and regulations, power of Commission to make, see section 78w of this title.

Securities with unlisted trading privileges, exemption from the operation of this section, see section 78*l* of this title.

Short sales in contravention of rules and regulations of Commission, see section 78j of this title.

Federal Rules of Civil Procedure

One form of action, see rule 2, Title 28, Appendix, Judiciary and Judicial Procedure.

Section Referred to in Other Sections

This section is referred to in sections 78*l*, 78hh, 79q of this title.

§ 78q. Records and reports

(a) Rules and regulations

(1) Every national securities exchange, member thereof, broker or dealer who transacts a business in securities through the medium of any such member, registered securities association, registered broker or dealer, registered municipal securities dealer, registered securities information processor, registered transfer agent, and registered clearing agency and the Municipal Securities Rulemaking Board shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.

(2) Every registered clearing agency shall also make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports, as the appropriate regulatory agency for such clearing agency, by rule, prescribes as necessary or appropriate for the safeguarding of securities and funds in the custody or control of such clearing agency or for which it is responsible.

(3) Every registered transfer agent shall also make and keep for prescribed periods such records, furnish such copies thereof, and make such reports as the appropriate regulatory agency for such transfer agent, by rule, prescribes as necessary or appropriate in furtherance of the purposes of section 78q-1 of this title.

(b) Examination of records; notice; avoidance of duplication and undue regulatory burden

All records of persons described in subsection (a) of this section are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency for such persons as the Commission or the appropriate regulatory agency for such persons deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter: *Provided, however,* That the Commission shall, prior to conducting any such examination of a registered clearing agency, registered transfer agent, or registered municipal securities dealer for which it is not the appropriate regulatory agency, give notice to the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer of such proposed examination and consult with such appropriate regulatory agency concerning the feasibility and desirability of coordinating such examination with examinations conducted by such appropriate regulatory agency with a view to avoiding unnecessary regulatory duplication or undue regulatory burdens for such clearing agency, transfer agent, or municipal securities dealer. Nothing in the proviso to the preceding sentence shall be construed to impair or limit (other than by the requirement of prior consultation) the power of the Commission under this subsection to examine any clearing agency, transfer agent, or municipal securities dealer or to affect in any way the power of the Commission under any other provision of this chapter or otherwise to inspect, examine, or investigate any such clearing agency, transfer agent, or municipal securities dealer.

(c) Copies of reports filed with other regulatory agencies

(1) Every clearing agency, transfer agent, and municipal securities dealer for which the Commission is not the appropriate regulatory agency shall (A) file with the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer a copy of any application, notice, proposal, report, or document filed with the Commission by reason of its being a clearing agency, transfer agent, or municipal securities dealer and (B) file with the Commission a copy of any application, notice, proposal, report, or document filed with such appropriate regulatory agency by reason of its being a clearing agency, transfer agent, or municipal securities dealer. The Municipal Securities Rulemaking Board shall file with each agency enumerated in section 78c(a)(34)(A) of this title copies of every proposed rule change filed with the Commission pursuant to section 78s(b) of this title.

(2) The appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for which the Commission is not the appropriate regulatory agency shall file with the Commission notice of the commencement of any proceeding and a copy of any order

entered by such appropriate regulatory agency against such clearing agency, transfer agent, or municipal securities dealer, and the Commission shall file with such appropriate regulatory agency notice of the commencement of any proceeding and a copy of any order entered by the Commission against such clearing agency, transfer agent, or municipal securities dealer.

(3) The Commission and the appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for which the Commission is not the appropriate regulatory agency shall each notify the other and make a report of any examination conducted by it of such clearing agency, transfer agent, or municipal securities dealer, and, upon request, furnish to the other a copy of such report and any data supplied to it in connection with such examination.

(d) Self-regulatory organizations

(1) The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of a national market system and national system for the clearance and settlement of securities transactions, may—

(A) with respect to any person who is a member of or participant in more than one self-regulatory organization, relieve any such self-regulatory organization of any responsibility under this chapter (i) to receive regulatory reports from such person, (ii) to examine such person for compliance, or to enforce compliance by such person, with specified provisions of this chapter, the rules and regulations thereunder, and its own rules, or (iii) to carry out other specified regulatory functions with respect to such person, and

(B) allocate among self-regulatory organizations the authority to adopt rules with respect to matters as to which, in the absence of such allocation, such self-regulatory organizations share authority under this chapter.

In making any such rule or entering any such order, the Commission shall take into consideration the regulatory capabilities and procedures of the self-regulatory organizations, availability of staff, convenience of location, unnecessary regulatory duplication, and such other factors as the Commission may consider germane to the protection of investors, cooperation and coordination among self-regulatory organizations, and the development of a national market system and a national system for the clearance and settlement of securities transactions. The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, may require any self-regulatory organization relieved of any responsibility pursuant to this paragraph, and any person with respect to whom such responsibility relates, to take such steps as are specified in any such rule or order to notify customers of, and persons doing business with, such person of the limited nature of such self-regulatory organization's responsibility for such person's acts, practices, and course of business.

(2) A self-regulatory organization shall furnish copies of any report of examination of any person who is a member of or a participant in such self-regulatory organization to any other self-regulatory organization of which such person is a member or in which such person is a participant upon the request of such person, such other self-regulatory organization, or the Commission.

(e) Balance sheet and income statement; other financial statements and information

(1)(A) Every registered broker or dealer shall annually file with the Commission a balance sheet and income statement certified by an independent public accountant, prepared on a calendar or fiscal year basis, and such other financial statements (which shall, as the Commission specifies, be certified) and information concerning its financial condition as the Commission, by rule may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) Every registered broker and dealer shall annually send to its customers its certified balance sheet and such other financial statements and information concerning its financial condition as the Commission, by rule, may prescribe pursuant to subsection (a) of this section.

(C) The Commission, by rule or order, may conditionally or unconditionally exempt any registered broker or dealer, or class of such brokers or dealers, from any provision of this paragraph if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest or for the protection of investors, may prescribe the form and content of financial statements filed pursuant to this chapter and the accounting principles and accounting standards used in their preparation.

(f) Missing, lost, counterfeit, and stolen securities

(1) Every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System, and bank whose deposits are insured by the Federal Deposit Insurance Corporation shall—

(A) report to the Commission or other person designated by the Commission such information about missing, lost, counterfeit, or stolen securities, in such form and within such time as the Commission, by rule, determines is necessary or appropriate in the public interest or for the protection of investors; such information shall be available on request for a reasonable fee, to any such exchange, member, association, broker, dealer, municipal securities dealer, transfer agent, clearing agency, participant, member of the Federal Reserve System, or insured bank, and such other persons as the Commission, by rule, designates; and

(B) make such inquiry with respect to information reported pursuant to this subsection as the Commission, by rule, prescribes as necessary or appropriate in the public interest or for the protection of investors, to determine whether securities in their custody or control, for which they are responsible, or in which they are effecting, clearing, or settling a transaction have been reported as missing, lost, counterfeit, or stolen.

(2) Every member of a national securities exchange, broker, dealer, registered transfer agent, and registered clearing agency, shall require that each of its partners, directors, officers, and employees be fingerprinted and shall submit such fingerprints, or cause the same to be submitted, to the Attorney General of the United States for identification and appropriate processing. The Commission, by rule, may exempt from the provisions of this paragraph upon specified terms, conditions, and periods, any class of partners, directors, officers, or employees of any such member, broker, dealer, transfer agent, or clearing agency, if the Commission finds that such action is not inconsistent with the public interest or the protection of investors.

(3) In order to carry out the authority under paragraphs (1) and (2) above, the Commission or its designee may enter into agreement with the Attorney General to use the facilities of the National Crime Information Center ("NCIC") to receive, store, and disseminate information in regard to missing, lost, counterfeit, or stolen securities and to permit direct inquiry access to NCIC's file on such securities for the financial community.

(4) In regard to paragraphs (1), (2), and (3), above insofar as such paragraphs apply to any bank or member of the Federal Reserve System, the Commission may delegate its authority to:

(A) the Comptroller of the Currency as to national banks and banks operating under the Code of Law for the District of Columbia;

(B) the Federal Reserve Board in regard to any member of the Federal Reserve System which is not a national bank or a bank operating under the Code of Law for the District of Columbia; and

(C) the Federal Deposit Insurance Corporation for any State bank which is insured by the Federal Deposit Insurance Corporation but which is not a member of the Federal Reserve System.

(5) The Commission shall encourage the insurance industry to require their insured to report expeditiously instances of missing, lost, counterfeit, or stolen securities to the Commission or to such other person as the Commission may, by rule, designate to receive such information.

(g) Persons extending credit

Any broker, dealer, or other person extending credit who is subject to the rules and regulations prescribed by the Board of Governors of the Federal Reserve System pursuant to this chapter shall make such reports to the Board as it may require as necessary or appropriate to enable it to perform the functions conferred upon it by this chapter. If any such broker, dealer, or other person shall fail to make any such report or fail to furnish full information therein, or, if in the judgment of the Board it is otherwise necessary, such broker, dealer, or other person shall permit such inspections to be made by the Board with respect to the business operations of such broker, dealer, or other person as the Board may deem necessary to enable it to obtain the required information.

(June 6, 1934, ch. 404, title I, § 17, 48 Stat. 897; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704; May 27, 1936, ch. 462, § 4, 49 Stat. 1379; June 25, 1938, ch. 677, § 5, 52 Stat. 1076; June 4, 1975, Pub. L. 94-29, § 14, 89 Stat. 137.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (b), (d)(1)(A), (B), (e)(2), and (g), in the original read "this title". See References in Text note set out under section 78a of this title.

AMENDMENTS

1975—Subsec. (a). Pub. L. 94-29 designated existing provisions as par. (1), in par. (1) as so designated expanded the coverage to require registered municipal securities dealers, the Municipal Securities Rulemaking Board, registered securities information processors, and registered clearing agencies to make and keep such records, to furnish copies thereof, and to make such reports as the Commission may prescribe and clarified the Commission's authority to require the dissemination of reports submitted pursuant to the rules of the Commission, and added pars. (2) and (3).

Subsec. (b). Pub. L. 94-29 added subsec. (b). Former subsec. (b) redesignated (g).

Subsecs. (c) to (f). Pub. L. 94-29 added subsecs. (c) to (f).

Subsec. (g). Pub. L. 94-29 redesignated former subsec. (b) as (g).

1938—Subsec. (a). Act June 25, 1938, inserted "every registered securities association".

1936—Subsec. (a). Act May 27, 1936, inserted "every broker or dealer registered pursuant to section 78o of this title" in place of "every broker or dealer making or creating a market for both the purchase and sale of securities through the use of the mails or of any means or instrumentality of interstate commerce".

CHANGE OF NAME

Former subsec. (b), now (g), amended by act Aug. 23, 1935, which substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Effective date, see sections 78hh and 78hh-1 of this title.

Rules and regulations, power of Commission and Board of Governors of Federal Reserve System to make, see section 78w of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78f, 78o-3, 78o-4, 78q-1, 78s, 78y, 78hh, 78fff, 78iii of this title.

§ 78q-1. National system for clearance and settlement of securities transactions

(a) Congressional findings; facilitating establishment of system

(1) The Congress finds that—

(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

(C) New data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(2) The Commission is directed, therefore, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents, to use its authority under this chapter to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempted securities) in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection. The Commission shall use its authority under this chapter to assure equal regulation under this chapter of registered clearing agencies and registered transfer agents.

(b) Registration of clearing agencies; application; determinations by Commission requisite to registration of applicant as clearing agency; denial of participation; discipline; summary proceedings

(1) Except as otherwise provided in this section, it shall be unlawful for any clearing agency, unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security). The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provisions of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. A clearing agency or transfer agent shall not perform the functions of both a clearing agency and a transfer agent unless such clearing agency or transfer agent is registered in accordance with this subsection and subsection (c) of this section.

(2) A clearing agency may be registered under the terms and conditions hereinafter provided in this subsection and in accordance with the provisions of section 78s(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the clearing agency and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the prompt and accurate clearance and settlement of securities transactions.

(3) A clearing agency shall not be registered unless the Commission determines that—

(A) Such clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of this chapter and the rules and regulations thereunder, to enforce (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) compliance by its participants with the rules of the clearing agency, and to carry out the purposes of this section.

(B) Subject to the provisions of paragraph (4) of this subsection, the rules of the clearing agency provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, (iv) bank, (v) insurance company, or (vi) other person or class of persons as the Commission, by rule, may from time to time designate as appropriate to the development of a national system for the prompt and accurate clearance and settlement of securities transactions may become a participant in such clearing agency.

(C) The rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. (The Commission may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency.)

(D) The rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

(E) The rules of the clearing agency do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.

(F) The rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, or to regulate by virtue of any authority conferred by this chapter matters not related to the purposes of this section or the administration of the clearing agency.

(G) The rules of the clearing agency provide that (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of this title) its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.

(H) The rules of the clearing agency are in accordance with the provisions of paragraph (5) of this subsection, and, in general, provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency.

(I) The rules of the clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.

(4)(A) A registered clearing agency may, and in cases in which the Commission, by order, directs as appropriate in the public interest shall, deny participation to any person subject to a statutory disqualification. A registered clearing agency shall file notice with the Commission not less than thirty days prior to admitting any person to participation, if the clearing agency knew, or in the exercise of reasonable care should have known, that such person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) A registered clearing agency may deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of the clearing agency. A registered clearing agency may examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency.

(5)(A) In any proceeding by a registered clearing agency to determine whether a participant should be disciplined (other than a summary proceeding pursuant to subparagraph (C) of this paragraph), the clearing agency shall bring specific charges, notify such participant of, and give him an opportunity to defend against such charges, and keep a record. A determination by the clearing agency to impose a disciplinary sanction shall be supported by a statement setting forth—

(i) any act or practice in which such participant has been found to have engaged, or which such participant has been found to have omitted;

(ii) the specific provisions of the rules of the clearing agency which any such act or practice, or omission to act, is deemed to violate; and

(iii) the sanction imposed and the reasons therefor.

(B) In any proceeding by a registered clearing agency to determine whether a person shall be denied participation or prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial or prohibition or limitation under consideration and keep a record. A determination by the clearing agency to deny participation or prohibit or limit a person with respect to access to services offered by the clearing agency shall be supported by a statement setting forth the specific grounds on which the denial or prohibition or limitation is based.

(C) A registered clearing agency may summarily suspend and close the accounts of a participant who (i) has been and is expelled or suspended from any self-regulatory organization, (ii) is in default of any delivery of funds or securities to the clearing agency, or (iii) is in such financial or operating difficulty that the clearing agency determines and so notifies the appropriate regulatory agency for such participant that such suspension and closing of accounts are necessary for the protection of the clearing agency, its participants, creditors, or investors. A participant so summarily suspended shall be promptly afforded an opportunity for a hearing by the clearing agency in accordance with the provisions of subparagraph (A) of this paragraph. The appropriate regulatory agency for such participant, by order, may stay any such summary suspension on its own motion or upon application by any person aggrieved thereby, if such appropriate regulatory agency determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and protection of investors.

(6) No registered clearing agency shall prohibit or limit access by any person to services offered by any participant therein.

(c) Registration of transfer agents

(1) Except as otherwise provided in this section, it shall be unlawful for any transfer agent, unless registered in accordance with this section, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the function of a transfer agent with respect to any security registered under section 78*l* of this title or which would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that section. The appropriate regulatory agency, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any person or security or class of persons or securities from any provision of this section or any rule or regulation prescribed under this

section, if the appropriate regulatory agency finds (A) that such exemption is in the public interest and consistent with the protection of investors and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds, and (B) the Commission does not object to such exemption.

(2) A transfer agent may be registered by filing with the appropriate regulatory agency for such transfer agent an application for registration in such form and containing such information and documents concerning such transfer agent as such appropriate regulatory agency may prescribe as necessary or appropriate in furtherance of the purposes of this section. Except as hereinafter provided, such registration shall become effective thirty days after receipt of such application by such appropriate regulatory agency or within such shorter period of time as such appropriate regulatory agency may determine.

(3)(A) The appropriate regulatory agency for a transfer agent, by order, shall deny registration to, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of such transfer agent, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such denial, censure, placing of limitations, suspension, or revocation is in the public interest and that such transfer agent has willfully violated or is unable to comply with any provision of this section or section 78q of this title or the rules or regulations thereunder.

(B) Pending final determination whether any registration by a transfer agent under this subsection shall be denied, the appropriate regulatory agency for such transfer agent, by order, may postpone the effective date of such registration for a period not to exceed fifteen days, but if, after notice and opportunity for hearing (which may consist solely of affidavits and oral arguments), it shall appear to such appropriate regulatory agency to be necessary or appropriate in the public interest or for the protection of investors to postpone the effective date of such registration until final determination, such appropriate regulatory agency shall so order. Pending final determination whether any registration under this subsection shall be revoked, such appropriate regulatory agency, by order, may suspend such registration, if such suspension appears to such appropriate regulatory agency, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors.

(C) A registered transfer agent may, upon such terms and conditions as the appropriate regulatory agency for such transfer agent deems necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of this section, withdraw from registration by filing a written notice of withdrawal with such appropriate regulatory agency. If such appropriate regulatory agency finds that any transfer agent for which it is the appropriate regulatory agency, is no longer in existence or has ceased to do business as a transfer agent, such appropriate regulatory agency, by order, shall cancel or deny the registration.

(d) Activities of clearing agencies and transfer agents; enforcement by appropriate regulatory agencies

(1) No registered clearing agency or registered transfer agent shall, directly or indirectly, engage in any activity as clearing agency or transfer agent in contravention of such rules and regulations (A) as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, or (B) as the appropriate regulatory agency for such clearing agency or transfer agent may prescribe as necessary or appropriate for the safeguarding of securities and funds.

(2) With respect to any clearing agency or transfer agent for which the Commission is not the appropriate regulatory agency, the appropriate regulatory agency for such clearing agency or transfer agent may, in accordance with section 1818 of title 12, enforce compliance by such clearing agency or transfer agent with the provisions of this section, sections 78q and 78s of this title, and the rules and regulations thereunder. For purposes of the preceding sentence, any violation of any such provision shall constitute adequate basis for the issuance of an order under section 1818(b) or 1818(c) of title 12, and the participants in any such clearing agency and the persons doing business with any such transfer agent shall be deemed to be "depositors" as that term is used in section 1818(c) of title 12.

(3)(A) With respect to any clearing agency or transfer agent for which the Commission is not the appropriate regulatory agency, the Commission and the appropriate regulatory agency for such clearing agency or transfer agent shall consult and cooperate with each other, and, as may be appropriate, with State banking authorities having supervision over such clearing agency or transfer agent toward the end that, to the maximum extent practicable, their respective regulatory responsibilities may be fulfilled and the rules and regulations applicable to such clearing agency or transfer agent may be in accord with both sound banking practices and a national system for the prompt and accurate clearance and settlement of securities transactions. In accordance with this objective—

(i) the Commission and such appropriate regulatory agency shall, at least fifteen days prior to the issuance for public comment of any proposed rule or regulation or adoption of any rule or regulation concerning such clearing agency or transfer agent, consult and request the views of the other; and

(ii) such appropriate regulatory agency shall assume primary responsibility to examine and enforce compliance by such clearing agency or transfer agent with the provisions of this section and sections 78q and 78s of this title.

(B) Nothing in the preceding subparagraph or elsewhere in this chapter shall be construed to impair or limit (other than by the requirement of notification) the Commission's authority to make rules under any provision of this chapter or to enforce compliance pursuant to any provision of this chapter by any clearing agency or transfer agent with the provisions of this chapter and the rules and regulations thereunder.

(4) Nothing in this section shall be construed to impair the authority of any State banking authority or other State or Federal regulatory authority having jurisdiction over a person registered as a clearing agency or transfer agent to make and enforce rules governing such person which are not inconsistent with this chapter and the rules and regulations thereunder.

(e) Physical movement of securities certificates

The Commission shall use its authority under this chapter to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities consummated by means of the mails or any means or instrumentalities of interstate commerce.

(June 6, 1934, ch. 404, title I, § 17A, as added June 4, 1975, Pub. L. 94-29, § 15, 89 Stat. 141.)

References in Text

This chapter, referred to in subsecs. (a)(2), (b)(3)(A), (F), (I), (d)(1), (3)(B), (4), and (e), in the original read "this title". See References in Text note set out under section 78a of this title.

Effective Date

Section effective June 4, 1975, except for subsecs. (b) and (c) which are effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

Section Referred to in Other Sections

This section is referred to in sections 78c, 78*l*, 78*o*, 78q, 78s, 78y of this title.

§ 78r. Liability for misleading statements

(a) Persons liable; persons entitled to recover; defense of good faith; suit at law or in equity; costs, etc.

Any person who shall make or cause to be made any statement in any application, report, or document filed pursuant to this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 78*o* of this title, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person (not knowing that such statement was false or misleading) who, in reliance upon such statement, shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading. A person seeking to enforce such liability may sue at law or in equity in any court of competent jurisdiction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit, and assess reasonable costs, including reasonable attorneys' fees, against either party litigant.

(b) Contribution

Every person who becomes liable to make payment under this section may recover contribution as in cases of contract from any person who, if joined in the original suit, would have been liable to make the same payment.

(c) Period of limitations

No action shall be maintained to enforce any liability created under this section unless brought within one year after the discovery of the facts constituting the cause of action and within three years after such cause of action accrued.

(June 6, 1934, ch. 404, title I, § 18, 48 Stat. 897; May 27, 1936, ch. 462, § 5, 49 Stat. 1379.)

References in Text

This chapter, referred to in subsec. (a), in the original read "this title". See References in Text note under section 78a of this title.

Amendments

1936—Subsec. (a). Act May 27, 1936, inserted "or any undertaking contained in a registration statement as provided in subsection (d) of section 78*o* of this title"

Cross References

Civil liabilities—
- Arising in connection with prospectuses and communications, see section 77*l* of this title.
- On account of false registration statement, see section 77k of this title.

Effective date, see sections 78hh and 78hh-1 of this title.

Liability for misleading statements under—
- Public Utility Holding Company Act of 1935, see section 79p of this title.
- Trust Indenture Act of 1939, see section 77www of this title.

Rules and regulations, power of Commission to make, see section 78w of this title.

Undertaking for costs and reasonable attorneys' fees under—
- Securities Act of 1933, see section 77k of this title.
- This subchapter in action for damages from manipulation of security prices, see section 78i of this title.
- Trust Indenture Act of 1939, see sections 77*ooo* and 77www of this title.

Federal Rules of Civil Procedure

Costs, see rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

Effect of rule 54 on this section, see note by Advisory Committee under rule 54.

One form of action, see rule 2.

Section Referred to in Other Sections

This section is referred to in sections 78*l*, 78hh, 78hhh, 79p of this title.

§ 78s. Registration, responsibilities, and oversight of self-regulatory organizations

(a) Registration procedures; notice of filing; other regulatory agencies

(1) The Commission shall, upon the filing of an application for registration as a national securities exchange, registered securities association, or registered clearing agency, pursuant to section 78f, 78*o*-3, or 78q-1 of this title, respectively, publish notice of such filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application. Within ninety days of the date of publication of such notice (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant such registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred eighty days of the date of a publication of notice of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if it finds that the requirements of this chapter and the rules and regulations thereunder with respect to the applicant are satisfied. The Commission shall deny such registration if it does not make such finding.

(2) With respect to an application for registration filed by a clearing agency for which the Commission is not the appropriate regulatory agency—

(A) The Commission shall not grant registration prior to the sixtieth day after the date of publication of notice of the filing of such application unless the appropriate regulatory agency for such clearing agency has notified the Commission of such appropriate regulatory agency's determination that such clearing agency is so organized and has the capacity to be able to safeguard securities and funds in its custody or control or for which it is responsible and that the rules of such clearing agency are designed to assure the safeguarding of such securities and funds.

(B) The Commission shall institute proceedings in accordance with paragraph (1)(B) of this subsection to determine whether registration should be denied if the appropriate regulatory agency for such clearing agency notifies the Commission within sixty days of the date of publication of notice of the filing of such application of such appropriate regulatory agency's (i) determination that such clearing agency may not be so organized or have the capacity to be able to safeguard securities or funds in its custody or control or for which it is responsible or that the rules of such clearing agency may not be designed to assure the safeguarding of such securities and funds and (ii) reasons for such determination.

(C) The Commission shall deny registration if the appropriate regulatory agency for such clearing agency notifies the Commission prior to the conclusion of proceedings instituted in accordance with paragraph (1)(B) of this subsection of such appropriate regulatory agency's (i) determination that such clearing agency is not so organized or does not have the capacity to be able to safeguard securities or funds in its custody or control or for which it is responsible or that the rules of such clearing agency are not designed to assure the safeguarding of such securities or funds and (ii) reasons for such determination.

(3) A self-regulatory organization may, upon such terms and conditions as the Commission, by rule, deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any self-regulatory organization is no longer in existence or has ceased to do business in the capacity specified in its application for registration, the Commission, by order, shall cancel its registration. Upon the withdrawal of a national securities association from registration or the cancellation, suspension, or revocation of the registration of a national securities association, the registration of any association affiliated therewith shall automatically terminate.

(b) Proposed rule changes; notice; proceedings

(1) Each self-regulatory organization shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such self-regulatory organization (hereinafter in this subsection collectively referred to as a "proposed rule change") accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments concerning such proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this subsection.

(2) Within thirty-five days of the date of publication of notice of the filing of a proposed rule change in accordance with paragraph (1) of this subsection, or within such longer period as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall—

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved. Such proceedings shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded within one hundred eighty days of the date of publication of notice of the filing of the proposed rule change. At the conclusion of such proceedings the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to sixty days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the self-regulatory organization consents.

The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of this chapter and the rules and regulations thereunder applicable to such organization. The Commission shall disapprove a proposed rule change of a self-regulatory organization if it does not make such finding. The Commission shall not approve any proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

(3)(A) Notwithstanding the provisions of paragraph (2) of this subsection, a proposed rule change may take effect upon filing with the Commission if designated by the self-regulatory organization as (i) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization, (ii) establishing or changing a due, fee, or other charge imposed by the self-regulatory organization, or (iii) concerned solely with the administration of the self-regulatory organization or other matters which the Commission, by rule, consistent with the public interest and the purposes of this subsection, may specify as without the provisions of such paragraph (2).

(B) Notwithstanding any other provision of this subsection, a proposed rule change may be put into effect summarily if it appears to the Commission that such action is necessary for the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities or funds. Any proposed rule change so put into effect shall be filed promptly thereafter in accordance with the provisions of paragraph (1) of this subsection.

(C) Any proposed rule change of a self-regulatory organization which has taken effect pursuant to subparagraph (A) or (B) of this paragraph may be enforced by such organization to the extent it is not inconsistent with the provisions of this chapter, the rules and regulations thereunder, and applicable Federal and State law. At any time within sixty days of the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) of this subsection, the Commission summarily may abrogate the change in the rules of the self-regulatory organization made thereby and require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection and reviewed in accordance with the provisions of paragraph (2) of this subsection, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter. Commission action pursuant to the preceding sentence shall not affect the validity or force of the rule change during the period it was in effect and shall not be reviewable under section 78y of this title nor deemed to be "final agency action" for purposes of section 704 of title 5.

(4) With respect to a proposed rule change filed by a registered clearing agency for which the Commission is not the appropriate regulatory agency—

(A) The Commission shall not approve any such proposed rule change prior to the thirtieth day after the date of publication of notice of the filing whereof unless the appropriate regulatory agency for such clearing agency has notified the Commission of such appropriate regulatory agency's determination that the proposed rule change is consistent with the safeguarding of securities and funds in the custody or control of such clearing agency or for which it is responsible.

(B) The Commission shall institute proceedings in accordance with paragraph (2)(B) of this subsection to determine whether any such proposed rule change should be disapproved, if the appropriate regulatory agency for such clearing agency notifies the Commission within thirty days of the date of publication of notice of the filing of the proposed rule change of such appropriate regulatory agency's (i) determination that the proposed rule change may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination.

(C) The Commission shall disapprove any such proposed rule change if the appropriate regulatory agency for such clearing agency notifies the Commission prior to the conclusion of proceedings instituted in accordance with paragraph (2)(B) of this subsection of such appropriate regulatory agency's (i) determination that the proposed rule change is inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination.

(D) The Commission shall abrogate any change in the rules of such a clearing agency made by a proposed rule change which has taken effect pursuant to paragraph (3) of this subsection, require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection, and reviewed in accordance with the provisions of paragraph (2) of this subsection, if the appropriate regulatory agency for such clearing agency notifies the Commission within thirty days of the date of filing of such proposed rule change of such appropriate regulatory agency's (i) determination that the rules of such clearing agency as so changed may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination.

(c) Amendment by Commission of rules of self-regulatory organizations

The Commission, by rule, may abrogate, add to, and delete from (hereinafter in this subsection collectively referred to as "amend") the rules of a self-regulatory organization (other than a registered clearing agency) as the Commission deems necessary or appropriate to insure the fair administration of the self-regulatory organization, to conform its rules to requirements of this chapter and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this chapter, in the following manner:

(1) The Commission shall notify the self-regulatory organization and publish notice of the proposed rulemaking in the Federal Register. The notice shall include the text of the

proposed amendment to the rules of the self-regulatory organization and a statement of the Commission's reasons, including any pertinent facts, for commencing such proposed rulemaking.

(2) The Commission shall give interested persons an opportunity for the oral presentation of data, views, and arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(3) A rule adopted pursuant to this subsection shall incorporate the text of the amendment to the rules of the self-regulatory organization and a statement of the Commission's basis for and purpose in so amending such rules. This statement shall include an identification of any facts on which the Commission considers its determination so to amend the rules of the self-regulatory agency to be based, including the reasons for the Commission's conclusions as to any of such facts which were disputed in the rulemaking.

(4)(A) Except as provided in paragraphs (1) through (3) of this subsection, rulemaking under this subsection shall be in accordance with the procedures specified in section 553 of title 5 for rulemaking not on the record.

(B) Nothing in this subsection shall be construed to impair or limit the Commission's power to make, or to modify or alter the procedures the Commission may follow in making, rules and regulations pursuant to any other authority under this chapter.

(C) Any amendment to the rules of a self-regulatory organization made by the Commission pursuant to this subsection shall be considered for all purposes of this chapter to be part of the rules of such self-regulatory organization and shall not be considered to be a rule of the Commission.

(d) Notice of disciplinary action taken by self-regulatory organization against a member or participant; review of action by appropriate regulatory agency; procedure

(1) If any self-regulatory organization imposes any final disciplinary sanction on any member thereof or participant therein, denies membership or participation to any applicant, or prohibits or limits any person in respect to access to services offered by such organization or member thereof or if any self-regulatory organization (other than a registered clearing agency) imposes any final disciplinary sanction on any person associated with a member or bars any person from becoming associated with a member, the self-regulatory organization shall promptly file notice thereof with the appropriate regulatory agency for the self-regulatory organization and (if other than the appropriate regulatory agency for the self-regulatory organization) the appropriate regulatory agency for such member, participant, applicant, or other person. The notice shall be in such form and contain such information as the appropriate regulatory agency for the self-regulatory organization, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this chapter.

(2) Any action with respect to which a self-regulatory organization is required by paragraph (1) of this subsection to file notice shall be subject to review by the appropriate regulatory agency for such member, participant, applicant, or other person, on its own motion, or upon application by any person aggrieved thereby filed within thirty days after the date such notice was filed with such appropriate regulatory agency and received by such aggrieved person, or within such longer period as such appropriate regulatory agency may determine. Application to such appropriate regulatory agency for review, or the institution of review by such appropriate regulatory agency on its own motion, shall not operate as a stay of such action unless such appropriate regulatory agency otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). Each appropriate regulatory agency shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

(e) Disposition of review; cancellation, reduction, or remission of sanction

(1) In any proceeding to review a final disciplinary sanction imposed by a self-regulatory organization on a member thereof or participant therein or a person associated with such a member, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the self-regulatory organization and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction)—

(A) if the appropriate regulatory agency for such member, participant, or person associated with a member finds that such member, participant, or person associated with a member has engaged in such acts or practices, or has omitted such acts, as the self-regulatory organization has found him to have engaged in or omitted, that such acts or practices, or omissions to act, are in violation of such provisions of this chapter, the rules or regulations thereunder, the rules of the self-regulatory organization, or, in the case of a registered securities association, the rules of the Municipal Securities Rulemaking Board as have been specified in the determination of the self-regulatory organization, and that such provisions are, and were applied in a manner, consistent with the purposes of this chapter, such appropriate regulatory agency, by order, shall so declare and, as appropriate, affirm the sanction imposed by the self-regulatory organization, modify the sanction in accordance with paragraph (2) of this subsection, or remand to the self-regulatory organization for further proceedings; or

(B) if such appropriate regulatory agency does not make any such finding it shall, by order, set aside the sanction imposed by the self-regulatory organization and, if appropriate, remand to the self-regulatory organization for further proceedings.

(2) If the appropriate regulatory agency for a member, participant, or person associated with a member, having due regard for the public interest and the protection of investors, finds after a proceeding in accordance with paragraph (1) of this subsection that a sanction im-

posed by a self-regulatory organization upon such member, participant, or person associated with a member imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter or is excessive or oppressive, the appropriate regulatory agency may cancel, reduce, or require the remission of such sanction.

(f) Dismissal of review proceeding

In any proceeding to review the denial of membership or participation in a self-regulatory organization to any applicant, the barring of any person from becoming associated with a member of a self-regulatory organization, or the prohibition or limitation by a self-regulatory organization of any person with respect to access to services offered by the self-regulatory organization or any member thereof, if the appropriate regulatory agency for such applicant or person, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the self-regulatory organization and opportunity for the presentation of supporting reasons to dismiss the proceeding or set aside the action of the self-regulatory organization) finds that the specific grounds on which such denial, bar, or prohibition or limitation is based exist in fact, that such denial, bar, or prohibition or limitation is in accordance with the rules of the self-regulatory organization, and that such rules are, and were applied in a manner, consistent with the purposes of this chapter, such appropriate regulatory agency, by order, shall dismiss the proceeding. If such appropriate regulatory agency does not make any such finding or if it finds that such denial, bar, or prohibition or limitation imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter, such appropriate regulatory agency, by order, shall set aside the action of the self-regulatory organization and require it to admit such applicant to membership or participation, permit such person to become associated with a member, or grant such person access to services offered by the self-regulatory organization or member thereof.

(g) Compliance with rules and regulations

(1) Every self-regulatory organization shall comply with the provisions of this chapter, the rules and regulations thereunder, and its own rules, and (subject to the provisions of section 78q(d) of this title, paragraph (2) of this subsection, and the rules thereunder) absent reasonable justification or excuse enforce compliance—

(A) in the case of a national securities exchange, with such provisions by its members and persons associated with its members;

(B) in the case of a registered securities association, with such provisions and the provisions of the rules of the Municipal Securities Rulemaking Board by its members and persons associated with its members; and

(C) in the case of a registered clearing agency, with its own rules by its participants.

(2) The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of this chapter, may relieve any self-regulatory organization of any responsibility under this chapter to enforce compliance with any specified provision of this chapter or the rules or regulations thereunder by any member of such organization or person associated with such a member, or any class of such members or persons associated with a member.

(h) Suspension or revocation of self-regulatory organization's registration; censure; other sanctions

(1) The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, to suspend for a period not exceeding twelve months or revoke the registration of such self-regulatory organization, or to censure or impose limitations upon the activities, functions, and operations of such self-regulatory organization, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such self-regulatory organization has violated or is unable to comply with any provision of this chapter, the rules or regulations thereunder, or its own rules or without reasonable justification or excuse has failed to enforce compliance—

(A) in the case of a national securities exchange, with any such provision by a member thereof or a person associated with a member thereof;

(B) in the case of a registered securities association, with any such provision or any provision of the rules of the Municipal Securities Rulemaking Board by a member thereof or a person associated with a member thereof; or

(C) in the case of a registered clearing agency, with any provision of its own rules by a participant therein.

(2) The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, to suspend for a period not exceeding twelve months or expel from such self-regulatory organization any member thereof or participant therein, if such member or participant is subject to an order of the Commission pursuant to section 78*o*(b)(4) of this title or if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such member or participant has willfully violated or has effected any transaction for any other person who, such member or participant had reason to believe, was violating with respect to such transaction—

(A) in the case of a national securities exchange, any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], this chapter, or the rules or regulations under any of such statutes;

(B) in the case of a registered securities association, any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this chapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board; or

(C) in the case of a registered clearing agency, any provision of the rules of the clearing agency.

(3) The appropriate regulatory agency for a national securities exchange or registered securities association is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, to suspend for a period not exceeding twelve months or to bar any person from being associated with a member of such national securities exchange or registered securities association, if such person is subject to an order of the Commission pursuant to section 78o(b)(6) of this title or if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such person has willfully violated or has effected any transaction for any other person who, such person associated with a member had reason to believe, was violating with respect to such transaction—

(A) in the case of a national securities exchange, any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this chapter, or the rules or regulations under any of such statutes; or

(B) in the case of a registered securities association, any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this chapter, the rules or regulations under any of the statutes, or the rules of the Municipal Securities Rulemaking Board.

(4) The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, to remove from office or censure any officer or director of such self-regulatory organization, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such officer or director has willfully violated any provision of this chapter, the rules or regulations thereunder, or the rules of such self-regulatory organization, willfully abused his authority, or without reasonable justification or excuse has failed to enforce compliance—

(A) in the case of a national securities exchange, with any such provision by any member or person associated with a member;

(B) in the case of a registered securities association, with any such provision or any provision of the rules of the Municipal Securities Rulemaking Board by any member or person associated with a member; or

(C) in the case of a registered clearing agency, with any provision of the rules of the clearing agency by any participant.

(i) Appointment of trustee

If a proceeding under subsection (h)(1) of this section results in the suspension or revocation of the registration of a clearing agency, the appropriate regulatory agency for such clearing agency may, upon notice to such clearing agency, apply to any court of competent jurisdiction specified in section 78u(d) or 78aa of this title for the appointment of a trustee. In the event of such an application, the court may, to the extent it deems necessary or appropriate, take exclusive jurisdiction of such clearing agency and the records and assets thereof, wherever located; and the court shall appoint the appropriate regulatory agency for such clearing agency or a person designated by such appropriate regulatory agency as trustee with power to take possession and continue to operate or terminate the operations of such clearing agency in an orderly manner for the protection of participants and investors, subject to such terms and conditions as the court may prescribe.

(June 6, 1934, ch. 404, title I, § 19, 48 Stat. 898; Sept. 5, 1961, Pub. L. 87-196, 75 Stat. 465; July 27, 1962, Pub. L. 87-561, 76 Stat. 247; July 29, 1968, Pub. L. 90-438, 82 Stat. 453; Oct. 20, 1969, Pub. L. 91-94, 83 Stat. 141; Sept. 25, 1970, Pub. L. 91-410, 84 Stat. 862; June 4, 1975, Pub. L. 94-29, § 16, 89 Stat. 146.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (b)(2), (3)(C), (c), (d)(1), (e)(1)(A), (2), (f), (g), and (h), in the original read "this title". See References in Text note set out under section 78a of this title.

The Securities Act of 1933, referred to in subsec. (h), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

The Investment Advisers Act of 1940, referred to in subsec. (h), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§ 80b-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b-20 of this title and Tables volume.

The Investment Company Act of 1940, referred to in subsec. (h), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§ 80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables volume.

AMENDMENTS

1975—Pub. L. 94-29 completely rewrote the section to substitute provisions covering the registration, responsibilities, and oversight of self-regulatory organizations by the Commission for provisions covering only the Commission's powers with respect to exchanges and securities, with a view to consolidating and expanding the Commission's oversight powers with respect to self-regulatory organizations, their members, participants, and officers, and with a view to giving the Commission identical powers over all self-regulatory organizations, including registered clearing agencies, and substantially strengthening the Commission's ability to assure that these organizations carry out their statutory responsibilities.

1970—Subsec. (e)(1). Pub. L. 91-410 substituted "December 31, 1970" for "September 1, 1970".

1969—Subsec. (e). Pub. L. 91-94 substituted "September 1, 1970" for "September 1, 1969" in par. (1), and "$945,000" for "$875,000" in par. (4).

1968—Subsec. (e). Pub. L. 90-438 added subsec. (e).

1962—Subsec. (d). Pub. L. 87-561 substituted "April 3, 1963" for "January 3, 1963" and "$950,000" for "$750,000".

1961—Subsec. (d). Pub. L. 87-196 added subsec. (d).

Effective Date of 1975 Amendment

Amendment by Pub. L. 94-29 effective June 4, 1975, except for amendment of subsec. (g) by Pub. L. 94-29 which is effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Delegation of functions by Commission, generally, see section 78d-1 of this title.

Effective date, see section 78hh of this title.

Registration statements under Securities Act of 1933, effective date of and stop orders, see section 77h of this title.

Review by Commission of actions with respect to, see section 78d-1 of this title.

Rules and regulations, power of Commission to make, see section 78w of this title.

Rules of an exchange in respect of any security having unlisted trading privileges, powers and duties of Commission under subsec. (b) of this section as applicable to, see section 78*l* of this title.

Section Referred to in Other Sections

This section is referred to in sections 78c, 78d-1, 78f, 78k-1, 78o-3, 78q, 78q-1, 78w, 78y, 78bb, 78hh, 78iii of this title.

§ 78t. Liabilities of controlling persons

(a) Joint and several liability; good faith defense

Every person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

(b) Unlawful activity through or by means of any other person

It shall be unlawful for any person, directly or indirectly, to do any act or thing which it would be unlawful for such person to do under the provisions of this chapter or any rule or regulation thereunder through or by means of any other person.

(c) Hindering, delaying, or obstructing the making or filing of any document, report, or information

It shall be unlawful for any director or officer of, or any owner of any securities issued by, any issuer required to file any document, report, or information under this chapter or any rule or regulation thereunder without just cause to hinder, delay, or obstruct the making or filing of any such document, report, or information.

(June 6, 1934, ch. 404, title I, § 20, 48 Stat. 899; May 27, 1936, ch. 462, § 49 Stat. 1379; Aug. 20, 1964, Pub. L. 88-467, § 9, 78 Stat. 579.)

References in Text

This chapter, referred to in subsecs. (a), (b) and (c), in the original read "this title". See References in Text note under section 78a of this title.

Amendments

1964—Subsec. (c). Pub. L. 88-467 extended the application of the provisions of subsec. (c) by substituting the prohibition against any officer or director of, or an owner of securities issued by, a company from hindering, delaying, or obstructing the preparation or filing of any report, document, or information required to be filed under this chapter for existing provisions applicable only to filings by companies with securities registered on a national securities exchange or subject to the provisions of section 78*o*(d) of this title.

1936—Subsec. (c). Act May 27, 1936, added "or any undertaking contained in a registration statement as provided in subsection (d) of section 78*o* of this title".

Effective Date of 1964 Amendment

Amendment by Pub. L. 88-467 effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c of this title.

Cross References

Effective date, see section 78hh-1 of this title.

Liability of controlling persons under—

- Investment Company Act of 1940, see section 80a-47 of this title.
- Public Utility Holding Company Act of 1935, see section 79z-1 of this title.
- Securities Act of 1933, see section 77*o* of this title.

Section Referred to in Other Sections

This section is referred to in section 78kkk of this title.

§ 78u. Investigations and actions

(a) Authority and discretion of Commission to investigate violations

The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of this chapter, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or a person associated with a member, the rules of a registered clearing agency in which such person is a participant, or the rules of the Municipal Securities Rulemaking Board, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Commission is authorized in its discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which it may deem necessary or proper to aid in the enforcement of such provisions, in the prescribing of rules and regulations under this chapter, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this chapter relates.

(b) Attendance of witnesses; production of records

For the purpose of any such investigation, or any other proceeding under this chapter, any member of the Commission or any officer designated by it is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

(c) Judicial enforcement of investigative power of Commission; refusal to obey subpena; criminal sanctions

In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(d) Injunction proceedings

Wherever [1] it shall appear to the Commission that any person is engaged or is about to engage in acts or practices constituting a violation of any provision of this chapter, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or a person associated with a member, the rules of a registered clearing agency in which such person is a participant, or the rules of the Municipal Securities Rulemaking Board, it may in its discretion bring an action in the proper district court of the United States, the United States District Court for the District of Columbia, or the United States courts of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices as may constitute a violation of any provision of this chapter or the rules or regulations thereunder to the Attorney General, who may, in his discretion, institute the necessary criminal proceedings under this chapter.

(e) Mandamus

Upon application of the Commission the district courts of the United States, the United States District Court for the District of Columbia, and the United States courts of any territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus, injunctions, and orders commanding (1) any person to comply with the provisions of this chapter, the rules, regulations, and orders thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or person associated with a member, the rules of a registered clearing agency in which such person is a participant, the rules of the Municipal Securities Rulemaking Board, or any undertaking contained in a registration statement as provided in subsection (d) of section 78*o* of this title, (2) any national securities exchange or registered securities association to enforce compliance by its members and persons associated with its members with the provisions of this chapter, the rules, regulations, and orders thereunder, and the rules of such exchange or association, or (3) any registered clearing agency to enforce compliance by its participants with the provisions of the rules of such clearing agency.

(f) Rules of self-regulatory organizations

Notwithstanding any other provision of this chapter, the Commission shall not bring any action pursuant to subsection (d) or (e) of this section against any person for violation of, or to command compliance with, the rules of a self-regulatory organization unless it appears to the Commission that (1) such self-regulatory organization is unable or unwilling to take appropriate action against such person in the public interest and for the protection of investors, or (2) such action is otherwise necessary or appropriate in the public interest or for the protection of investors.

(g) Consolidation of actions; consent of Commission

Notwithstanding the provisions of section 1407(a) of title 28, or any other provision of law, no action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission, even though such other actions may involve common questions of fact, unless such consolidation is consented to by the Commission. The term "securities laws" as used herein includes the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).

(June 6, 1934, ch. 404, title I, § 21, 48 Stat. 899; May 27, 1936, ch. 462, § 7, 49 Stat. 1379; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 68 Stat. 107; Oct. 15, 1970, Pub. L. 91-452, title II, § 212, 84 Stat. 929; June 4, 1975, Pub. L. 94-29, § 17, 89 Stat. 154.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (d), (e), and (f), in the original read "this title". See References in Text note set out under section 78a of this title.

The Securities Act of 1933, referred to in subsec. (g), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

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[1] So in original, probably should be "Whenever".

The Securities Exchange Act of 1934, referred to in subsec. (g), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

The Public Utility Holding Company Act of 1935, referred to in subsec. (g), is act Aug. 26, 1935, ch. 687, title I, 49 Stat. 838, which is classified generally to chapter 2C (§ 79 et seq.) of this title. For complete classification of this Act to the Code, see section 79 of this title and Tables volume.

The Trust Indenture Act of 1939, referred to in subsec. (g), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, which is classified generally to subchapter III (§ 77aaa et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77aaa of this title and Tables volume.

The Investment Company Act of 1940, referred to in subsec. (g), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§ 80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables volume.

The Investment Advisers Act of 1940, referred to in subsec. (g), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§ 80b-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b-20 of this title and Tables volume.

The Securities Investor Protection Act of 1970, referred to in subsec. (g), is Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636, which is classified generally to chapter 2B-1 (§ 78aaa et seq.) of this title. For complete classification of this Act to the Code, see section 78aaa of this title and Tables volume.

Codification

The words "the district court of the United States for the District of Columbia" following "district court of the United States" in subsec. (d) and "district courts of the United States" in subsec. (e) have been deleted as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of title 28 which states that "The District of Columbia constitutes one judicial district".

Former subsecs. (e) and (f), now (d) and (e), respectively, amended by act June 25, 1936, which substituted "district court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia".

Amendments

1975—Subsec. (a). Pub. L. 94-29, § 17(1), expanded the Commission's power to conduct investigations to include violations of the rules of a national securities exchange, registered securities association, registered clearing agency, or the Municipal Securities Rulemaking Board.

Subsec. (d). Pub. L. 94-29, § 17(2), redesignated former subsec. (e) as (d) and in subsec. (d) as so redesignated substituted "has engaged, is engaged, or is about to engage" for "is engaged or about to engage", "any provision" for "the provisions", "the rules or regulations" for "or of any rule or regulation", and "such a showing" for "a proper showing", and inserted "the rules of a national securities exchange or registered securities association of which such persons is a member or a person associated with a member, the rules of a registered clearing agency in which such person is a participant, or the rules of the Municipal Securities Rulemaking Board," in the first sentence and inserted "as may constitute a violation of any provision of this chapter or the rules or regulations thereunder" in the second sentence. Former subsec. (d) was repealed by Pub. L. 91-452. See 1970 Amendment note below.

Subsec. (e). Pub. L. 94-29, § 17(2), redesignated former subsec. (f) as (e) and in subsec. (e) as so redesignated substituted "mandamus, injunctions, and orders commanding (1) any person to comply with the provisions of this chapter, the rules, regulations, and orders thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or person associated with a member, the rules of a registered clearing agency in which such person is a participant, the rules of the Municipal Securities Rulemaking Board, or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title" for "mandamus commanding any person to comply with the provisions of this chapter or any order of the Commission made in pursuance thereof or with any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title" and added cls. (2) and (3). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 94-29, § 17(3), added subsec. (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 94-29, § 17(3), added subsec. (g).

1970—Subsec. (d). Pub. L. 91-452 struck out subsec. (d) which related to the immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

1936—Subsec. (f). Act May 27, 1936, added "or with any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title".

Effective Date of 1975 Amendment

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

Effective Date of 1970 Amendment

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Savings Provision

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

Cross References

Actions to enjoin violations and institution of criminal proceedings under—
  Investment Advisers Act of 1940, see section 80b-9 of this title.
  Investment Company Act of 1940, see section 80a-41 of this title.
  Public Utility Holding Company Act of 1935, see section 79r of this title.
  Securities Act of 1933, see section 77t of this title.
  Trust Indenture Act of 1939, see section 77uuu of this title.
Administration of oaths, etc., under—
  Investment Advisers Act of 1940, see section 80b-9 of this title.
  Investment Company Act of 1940, see section 80a-41 of this title.
  Public Utility Holding Company Act of 1935, see section 79r of this title.

Securities Act of 1933, see section 77s of this title.
Trust Indenture Act of 1939, see section 77uuu of this title.

Attendance of witnesses and production of documents, judicial enforcement of orders under—
Investment Advisers Act of 1940, see section 80b-9 of this title.
Investment Company Act of 1940, see section 80a-41 of this title.
Public Utility Holding Company Act of 1935, see section 79r of this title.
Securities Act of 1933, see section 77v of this title.
Trust Indenture Act of 1939, see section 77uuu of this title.

Contempt proceedings, see sections 401, 402, 3285, 3691, and 3771 of Title 18, Crimes and Criminal Procedure.

Effective date, see section 78hh-1 of this title.

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Investigation of facts by Commission under—
Investment Advisers Act of 1940, see section 80b-9 of this title.
Investment Company Act of 1940, see section 80a-41 of this title.
Public Utility Holding Company Act of 1935, see section 79r of this title.
Securities Act of 1933, see section 77t of this title.
Trust Indenture Act of 1939, see section 77uuu of this title.

Issuance of mandamus under—
Public Utility Holding Company Act of 1935, see section 79r of this title.
Securities Act of 1933, see section 77t of this title.

Proceeding or order of Board of Governors of Federal Reserve System, section as applicable to, see section 78h of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

Mandamus as abolished but relief yet available by appropriate action or motion under rules, see rule 81.

Subpoena, see rule 45.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal contempt, see rule 42 and note by Advisory Committee under rule 42, Title 18, Appendix, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78c, 78h, 78s, 78y, 78eee, 715h of this title.

§ 78v. Hearings by Commission

Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

(June 6, 1934, ch. 404, title I, § 22, 48 Stat. 901.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Hearings by Commission under—
Investment Advisers Act of 1940, see section 80b-12 of this title.
Investment Company Act of 1940, see section 80a-40 of this title.
Public Utility Holding Company Act of 1935, see section 79s of this title.
Securities Act of 1933, see section 77u of this title.
Trust Indenture Act of 1939, see section 77ttt of this title.

§ 78w. Rules, regulations, and orders; annual reports

(a) Power to make rules and regulations; considerations; public disclosure

(1) The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 78c(a)(34) of this title shall each have power to make such rules and regulations as may be necessary or appropriate to implement the provisions of this chapter for which they are responsible or for the execution of the functions vested in them by this chapter, and may for such purposes classify persons, securities, transactions, statements, applications, reports, and other matters within their respective jurisdictions, and prescribe greater, lesser, or different requirements for different classes thereof. No provision of this chapter imposing any liability shall apply to any act done or omitted in good faith in conformity with a rule, regulation, or order of the Commission, the Board of Governors of the Federal Reserve System, other agency enumerated in section 78c(a)(34) of this title, any[1] self-regulatory organization, notwithstanding that such rule, regulation, or order may thereafter be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

(2) The Commission, in making rules and regulations pursuant to any provisions of this chapter, shall consider among other matters the impact any such rule or regulation would have on competition. The Commission shall not adopt any such rule or regulation which would impose a burden on competition not necessary or appropriate in furtherance of the purposes of this chapter. The Commission shall include in the statement of basis and purpose incorporated in any rule or regulation adopted under this chapter, the reasons for the Commission's determination that any burden on competition imposed by such rule or regulation is necessary or appropriate in furtherance of the purposes of this chapter.

(3) The Commission, in making rules and regulations pursuant to any provision of this chapter, considering any application for registration in accordance with section 78s(a) of this title, or reviewing any proposed rule change of a self-regulatory organization in accordance with section 78s(b) of this title, keep[2] in a public file and make available for copying all written statements filed with the Commission and all written communications between the Commission and any person relating to the proposed rule, regulation, application, or proposed rule change: *Provided, however,* That the Commission shall not be required to keep in a public file or make available for copying any such statement or communication which it may withhold from the public in accordance with the provisions of section 552 of title 5.

(b) Reports to Congress

(1) The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 78c(a)(34) of this title, shall each make an annual report to

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[1] So in original, probably should be "or any".

[2] So in original, probably should be "shall keep".

the Congress on its work for the preceding year, and shall include in each such report whatever information, data, and recommendations for further legislation it considers advisable with regard to matters within its respective jurisdiction under this chapter.

(2) The appropriate regulatory agency for a self-regulatory organization shall include in its annual report to the Congress for each fiscal year, a summary of its oversight activities under this chapter with respect to such self-regulatory organization, including a description of any examination conducted as part of such activities of any such organization, any material recommendation presented as part of such activities to such organization for changes in its organization or rules, and any action by such organization in response to any such recommendation.

(3) The appropriate regulatory agency for any class of municipal securities dealers shall include in its annual report to the Congress for each fiscal year a summary of its regulatory activities pursuant to this chapter with respect to such municipal securities dealers, including the nature of and reason for any sanction imposed pursuant to this chapter against any such municipal securities dealer.

(4) The Commission shall also include in its annual report to the Congress for each fiscal year—

(A) a summary of the Commission's oversight activities with respect to self-regulatory organizations for which it is not the appropriate regulatory agency, including a description of any examination of any such organization, any material recommendation presented to any such organization for changes in its organization or rules, and action by any such organization in response to any such recommendations;

(B) a statement and analysis of the expenses and operations of each self-regulatory organization in connection with the performance of its responsibilities under this chapter, for which purpose data pertaining to such expenses and operations shall be made available by such organization to the Commission at its request;

(C) beginning in 1975 and ending in 1980, information, data, and recommendations with respect to the development of a national system for the prompt and accurate clearance and settlement of securities transactions, including a summary of the regulatory activities, operational capabilities, financial resources, and plans of self-regulatory organizations and registered transfer agents with respect thereto;

(D) beginning in 1975 and ending in 1980, a description of the steps taken, and an evaluation of the progress made, toward the establishment of a national market system, and recommendations for further legislation it considers advisable with respect to such system;

(E) the steps the Commission has taken and the progress it has made toward ending the physical movement of the securities certificate in connection with the settlement of securities transactions, and its recommendations, if any, for legislation to eliminate the securities certificate;

(F) The[1] number of requests for exemptions from provisions of this chapter received, the number granted, and the basis upon which any such exemption was granted;

(G) a summary of the Commission's regulatory activities with respect to municipal securities dealers for which it is not the appropriate regulatory agency, including the nature of, and reason for, any sanction imposed in proceedings against such municipal securities dealers;

(H) beginning in 1975 and ending in 1980, a description of the effect the absence of any schedule or fixed rates of commissions, allowances, discounts, or other fees to be charged by members for effecting transactions on a national securities exchange is having on the maintenance of fair and orderly markets and the development of a national market system for securities;

(I) a statement of the time elapsed between the filing of reports pursuant to section 78m(f) of this title and the public availability of the information contained therein, the costs involved in the Commission's processing of such reports and tabulating such information, the manner in which the Commission uses such information, and the steps the Commission has taken and the progress it has made toward requiring such reports to be filed and such information to be made available to the public in machine language;

(J) information concerning (i) the effects its rules and regulations are having on the viability of small brokers and dealers; (ii) its attempts to reduce any unnecessary reporting burden on such brokers and dealers; and (iii) its efforts to help to assure the continued participation of small brokers and dealers in the United States securities markets; and

(K) a statement detailing its administration of the Freedom of Information Act, section 552 of title 5, including a copy of the report filed pursuant to subsection (d) of such section.

(c) Procedure for adjudication

The Commission, by rule, shall prescribe the procedure applicable to every case pursuant to this chapter of adjudication (as defined in section 551 of title 5) not required to be determined on the record after notice and opportunity for hearing. Such rules shall, as a minimum, provide that prompt notice shall be given of any adverse action or final disposition and that such notice and the entry of any order shall be accompanied by a statement of written reasons.

(June 6, 1934, ch. 404, title I, § 23, 48 Stat. 901; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704; May 27, 1936, ch. 462, § 8, 49 Stat. 1379; Aug. 20, 1964, Pub. L. 88-467, § 10, 78 Stat. 580; June 4, 1975, Pub. L. 94-29, § 18, 89 Stat. 155.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (c), in the original read "this title". See References in Text note under section 78a of this title.

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[1] So in original.

AMENDMENTS

1975—Subsec. (a). Pub. L. 94-29 designated existing provisions as par. (1), in par. (1) as so redesignated inserted references to other agencies enumerated in section 78c(a)(34) of this title, regulations appropriate to implement the provisions of this chapter for which the agencies are responsible, the classification of persons, transactions, statements, applications, and reports, the prescribing of greater, lesser, or different requirements for different classifications, and the non-liability of self-regulatory organization, and added pars. (2) and (3).

Subsec. (b). Pub. L. 94-29 designated existing provisions as par. (1) in par. (1) as so redesignated substituted "The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 78c(a)(34) of this title, shall each make an annual report to the Congress on its work for the preceding year, and shall include in each such report whatever information, data, and recommendations for further legislation it considers advisable with regard to matters within its respective jurisdiction under this chapter" for "The Commission and the Board of Governors of the Federal Reserve System, respectively, shall include in their annual reports to Congress such information, data, and recommendation for further legislation as they may deem advisable with regard to matters within their respective jurisdictions under this chapter. The Commission shall include in its annual reports to the Congress for the fiscal years ended on June 30 of 1965, 1966, and 1967 information, data, and recommendations specifically related to the operation of the amendments to this chapter made by the Securities Acts Amendments of 1964", and added pars. (2), (3), and (4).

Subsec. (c). Pub. L. 94-29 added subsec. (c).

1964—Subsec. (b). Pub. L. 88-467 required the Commission in its annual reports to Congress for fiscal years ending June 30, 1965, 1966, and 1967, to furnish information, data, and recommendations specifically related to the operations of the amendments to the Securities Exchange Act of 1934 made by the Securities Act Amendments of 1964.

1936—Subsec. (a). Act May 27, 1936, added second sentence.

CHANGE OF NAME

Act Aug. 23, 1935, substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-467 effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Effective date, see section 78hh-1 of this title.

Information, upon registration of national security exchange, necessary or appropriate in public interest or for protection of investors, see section 78f of this title.

Integration of procedure with other Acts, see section 77hhh of this title.

Rules and regulations—

Accounts, records, and reports of exchanges, members, and others, see section 78q of this title.

Agreement upon registration of national security exchange as not a waiver of right to contest validity of, see section 78f of this title.

Brokers deemed to be registered, see section 78o-1 of this title.

Equity security, see section 78c of this title.

Exempted security, see section 78c of this title.

Exemption of transactions by directors, officers, and principal stockholders from regulation, see section 78p of this title.

Investment Advisers Act of 1940, see section 80b-11 of this title.

Investment Company Act of 1940, see section 80a-37 of this title.

Liability for misleading statements filed pursuant to, see section 78r of this title.

Manipulation of security prices, see section 78i of this title.

Manipulative or deceptive device in contravention of, see section 78j of this title.

Margin requirements, see section 78g of this title.

Over-the-counter brokers' and dealers' associations, see section 78o-3 of this title.

Over-the-counter markets, registration of brokers, and information and reports, see section 78o of this title.

Pegging, fixing, or stabilizing security prices, see section 78i of this title.

Periodical and other reports, see section 78m of this title.

Power to define technical, trade, and accounting terms, see section 78c of this title.

Powers with respect to exchanges and securities following violation of, see section 78s of this title.

Proxies, see section 78n of this title.

Public Utility Holding Company Act of 1935, see section 79t of this title.

Puts, calls, straddles, options, or privileges, see section 78i of this title.

Registration of exchange as a national securities exchange upon compliance with, see section 78f of this title.

Registration requirements for securities, see section 78*l* of this title.

Restrictions on borrowing by members, brokers, and dealers, see section 78h of this title.

Rules of exchange, adoption and enforcement, when not inconsistent with, see section 78f of this title.

Rules of exchange to declare as conduct or proceeding inconsistent with just and equitable principles of trade a violation of, see section 78f of this title.

Securities Act of 1933, see section 77s of this title.

Segregation and limitation of functions of members, brokers, and dealers, see section 78k of this title.

Short sales and stop-loss orders, see section 78j of this title.

Trust Indenture Act of 1939, see section 77sss of this title.

Withdrawal of registration of exchange upon application in accordance with, see section 78f of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78c of this title.

§ 78x. Public availability of information

(a) For purposes of section 552 of title 5 the term "records" includes all applications, statements, reports, contracts, correspondence, notices, and other documents filed with or otherwise obtained by the Commission pursuant to this chapter or otherwise.

(b) It shall be unlawful for any member, officer, or employee of the Commission to disclose to any person other than a member, officer, or employee of the Commission, or to use for personal benefit, any information contained in any application, statement, report, contract, correspondence, notice, or other document filed with or otherwise obtained by the Commission (1) in contravention of the rules and regulations of the Commission under section 552 of title 5, or (2) in circumstances where the Commission has determined pursuant to such rules to accord confidential treatment to such information. Nothing in this subsection shall authorize the Commission to withhold information from the Congress.

(June 6, 1934, ch. 404, title I, § 24, 48 Stat. 901; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704; June 4, 1975, Pub. L. 94-29, § 19, 89 Stat. 158.)

References in Text

This chapter, referred to in subsec. (a), in the original read "this title". See References in Text note set out under section 78a of this title.

Amendments

1975—Subsec. (a). Pub. L. 94-29 substituted "For purposes of section 552 of title 5, the term 'records' includes all applications, statements, reports, contracts, correspondence, notices, and other documents filed with or otherwise obtained by the Commission pursuant to this chapter or otherwise" for "Nothing in this chapter shall be construed to require, or to authorize the Commission to require, the revealing of trade secrets or processes in any application, report, or document filed with the Commission under this chapter".

Subsec. (b). Pub. L. 94-29 redesignated subsec. (c) as (b) and in subsec. (b) as so redesignated substituted "application, statement, report, contract, correspondence, notice, or other document filed with or otherwise obtained by the Commission (1) in contravention of the rules and regulations of the Commission under section 552 of title 5, or (2) in circumstances where the Commission has determined pursuant to such rules to accord confidential treatment for such information. Nothing in this subsection shall authorize the Commission to withhold information from Congress" for "application, report, or document filed with the Commission which is not made available to the public pursuant to subsection (b) of this section: *Provided*, That the Commission may make available to the Board of Governors of the Federal Reserve System any information requested by the Board for the purpose of enabling it to perform its duties under this chapter". Former subsec. (b), providing for written objection to public disclosure of information, was stricken.

Subsec. (c). Pub. L. 94-29 redesignated former subsec. (c) as (b).

Change of Name

Act Aug. 23, 1935, substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

Effective Date of 1975 Amendment

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Information filed with Commission, public access to or unlawful disclosure of under—

Investment Advisers Act of 1940, see section 80b-10 of this title.

Investment Company Act of 1940, see section 80a-44 of this title.

Public Utility Holding Company Act of 1935, see section 79v of this title.

Securities Act of 1933, see section 77f of this title.

§ 78y. Court review of orders and rules

(a) Final Commission orders; persons aggrieved; petition; record; findings; affirmance, modification, enforcement, or setting aside of orders; remand to adduce additional evidence

(1) A person aggrieved by a final order of the Commission entered pursuant to this chapter may obtain review of the order in the United States Court of Appeals for the circuit in which he resides or has his principal place of business, or for the District of Columbia Circuit, by filing in such court, within sixty days after the entry of the order, a written petition requesting that the order be modified or set aside in whole or in part.

(2) A copy of the petition shall be transmitted forthwith by the clerk of the court to a member of the Commission or an officer designated by the Commission for that purpose. Thereupon the Commission shall file in the court the record on which the order complained of is entered, as provided in section 2112 of title 28 and the Federal Rules of Appellate Procedure.

(3) On the filing of the petition, the court has jurisdiction, which becomes exclusive on the filing of the record, to affirm or modify and enforce or to set aside the order in whole or in part.

(4) The findings of the Commission as to the facts, if supported by substantial evidence, are conclusive.

(5) If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there was reasonable ground for failure to adduce it before the Commission, the court may remand the case to the Commission for further proceedings, in whatever manner and on whatever conditions the court considers appropriate. If the case is remanded to the Commission, it shall file in the court a supplemental record containing any new evidence, any further or modified findings, and any new order.

(b) Commission rules; persons adversely affected; petition; record; affirmance, enforcement, or setting aside of rules; findings; transfer of proceedings

(1) A person adversely affected by a rule of the Commission promulgated pursuant to section 78f, 78k, 78k-1, 78*o*(c)(5) or (6), 78*o*-3, 78q, 78q-1, or 78s of this title may obtain review of this rule in the United States Court of Appeals for the circuit in which he resides or has his principal place of business or for the District of Columbia Circuit, by filing in such court, within sixty days after the promulgation of the rule, a written petition requesting that the rule be set aside.

(2) A copy of the petition shall be transmitted forthwith by the clerk of the court to a member of the Commission or an officer designated for that purpose. Thereupon, the Commission shall file in the court the rule under review and any documents referred to therein, the Commission's notice of proposed rulemak-

ing and any documents referred to therein, all written submissions and the transcript of any oral presentations in the rulemaking, factual information not included in the foregoing that was considered by the Commission in the promulgation of the rule or proffered by the Commission as pertinent to the rule, the report of any advisory committee received or considered by the Commission in the rulemaking, and any other materials prescribed by the court.

(3) On the filing of the petition, the court has jurisdiction, which becomes exclusive on the filing of the materials set forth in paragraph (2) of this subsection, to affirm and enforce or to set aside the rule.

(4) The findings of the Commission as to the facts identified by the Commission as the basis, in whole or in part, of the rule, if supported by substantial evidence, are conclusive. The court shall affirm and enforce the rule unless the Commission's action in promulgating the rule is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or without observance of procedure required by law.

(5) If proceedings have been instituted under this subsection in two or more courts of appeals with respect to the same rule, the Commission shall file the materials set forth in paragraph (2) of this subsection in that court in which a proceeding was first instituted. The other courts shall thereupon transfer all such proceedings to the court in which the materials have been filed. For the convenience of the parties in the interest of justice that court may thereafter transfer all the proceedings to any other court of appeals.

(c) Objections not urged before Commission; stay of orders and rules; transfer of enforcement or review proceedings

(1) No objection to an order or rule of the Commission, for which review is sought under this section, may be considered by the court unless it was urged before the Commission or there was reasonable ground for failure to do so.

(2) The filing of a petition under this section does not operate as a stay of the Commission's order or rule. Until the court's jurisdiction becomes exclusive, the Commission may stay its order or rule pending judicial review if it finds that justice so requires. After the filing of a petition under this section, the court, on whatever conditions may be required and to the extent necessary to prevent irreparable injury, may issue all necessary and appropriate process to stay the order or rule or to preserve status or rights pending its review; but (notwithstanding section 705 of title 5) no such process may be issued by the court before the filing of the record or the materials set forth in subsection (b)(2) of this section unless: (A) the Commission has denied a stay or failed to grant requested relief, (B) a reasonable period has expired since the filing of an application for a stay without a decision by the Commission, or (C) there was reasonable ground for failure to apply to the Commission.

(3) When the same order or rule is the subject of one or more petitions for review filed under this section and an action for enforcement filed in a district court of the United States under section 78u(d) or (e) of this title, that court in which the petition or the action is first filed has jurisdiction with respect to the order or rule to the exclusion of any other court, and thereupon all such proceedings shall be transferred to that court; but, for the convenience of the parties in the interest of justice, that court may thereafter transfer all the proceedings to any other court of appeals or district court of the United States, whether or not a petition for review or an action for enforcement was originally filed in the transferee court. The scope of review by a district court under section 78u(d) or (e) of this title is in all cases the same as by a court of appeals under this section.

(d) Other appropriate regulatory agencies

(1) For purposes of the preceding subsections of this section, the term "Commission" includes the agencies enumerated in section 78c(a)(34) of this title insofar as such agencies are acting pursuant to this chapter.

(2) For purposes of subsection (a)(4) of this section and section 706 of title 5, an order of the Commission pursuant to section 78s(a) of this title denying registration to a clearing agency for which the Commission is not the appropriate regulatory agency or pursuant to section 78s(b) of this title disapproving a proposed rule change by such a clearing agency shall be deemed to be an order of the appropriate regulatory agency for such clearing agency insofar as such order was entered by reason of a determination by such appropriate regulatory agency pursuant to section 78s(a)(2)(C) or 78s(b)(4)(C) of this title that such registration or proposed rule change would be inconsistent with the safeguarding of securities or funds.

(June 6, 1934, ch. 404, title I, § 25, 48 Stat. 901; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Aug. 28, 1958, Pub. L. 85-791, § 10, 72 Stat. 945; June 4, 1975, Pub. L. 94-29, § 20, 89 Stat. 158.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (d)(1), in the original read "this title". See References in Text note set out under section 78a of this title.

The Federal Rules of Appellate Procedure, referred to in subsec. (a)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1975—Subsec. (a). Pub. L. 94-29 reworked existing provisions into five numbered paragraphs.

Subsec. (b). Pub. L. 94-29 substituted provisions permitting persons adversely affected by any rule promulgated by the Commission pursuant to sections 78f, 78k, 78k-1, 78o(c) (5) or (6), 78o-3, 78q, 78q-1, or 78s of this title to obtain direct review in an appropriate Court of Appeals for provisions that commencement of proceedings under subsec. (a) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

Subsecs. (c), (d). Pub. L. 94-29 added subsecs. (c) and (d).

1958—Subsec. (a). Pub. L. 85-791, in second sentence, substituted "transmitted by the clerk of the court to" for "served upon", eliminated "certify and" preceding "file in the court", eliminated "a transcript of" following "file in the court", and inserted "as provided in section 2112 of title 28", and, in third sentence, substituted "petition" for "transcript", and "jurisdiction, which upon the filing of the record shall be exclusive" for "exclusive jurisdiction".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

Act June 7, 1934, substituted "United States Court of Appeals for the District of Columbia" for "Court of Appeals for District of Columbia".

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Proceeding or order of Board of Governors of Federal Reserve System, section as applicable to, see section 78h of this title.

Review of orders under—
- Investment Advisers Act of 1940, see section 80b-13 of this title.
- Investment Company Act of 1940, see section 80a-42 of this title.
- Public Utility Holding Company Act of 1935, see section 79x of this title.
- Securities Act of 1933, see section 77i of this title.
- Trust Indenture Act of 1939, see section 77vvv of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under rule 54, see note by Advisory Committee under rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

Costs, see rule 54.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78f, 78h, 78k-1, 78s of this title.

§ 78z. Unlawful representations

No action or failure to act by the Commission or the Board of Governors of the Federal Reserve System, in the administration of this chapter shall be construed to mean that the particular authority has in any way passed upon the merits of, or given approval to, any security or any transaction or transactions therein, nor shall such action or failure to act with regard to any statement or report filed with or examined by such authority pursuant to this chapter or rules and regulations thereunder, be deemed a finding by such authority that such statement or report is true and accurate on its face or that it is not false or misleading. It shall be unlawful to make, or cause to be made, to any prospective purchaser or seller of a security any representation that any such action or failure to act by any such authority is to be so construed or has such effect.

(June 6, 1934, ch. 404, title I, § 26, 48 Stat. 902; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this title". See References in Text note under section 78a of this title.

CHANGE OF NAME

Act Aug. 23, 1935, substituted "Board of Governors of the Federal Reserve System" for "Federal Reserve Board".

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Unlawful representations under—
- Investment Advisers Act of 1940, see section 80b-8 of this title.
- Investment Company Act of 1940, see section 80a-34 of this title.
- Public Utility Holding Company Act of 1935, see section 79z-2 of this title.
- Securities Act of 1933, see section 77w of this title.
- Trust Indenture Act of 1939, see section 77xxx of this title.

§ 78aa. Jurisdiction of offenses and suits

The district courts of the United States, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this chapter or rules and regulations thereunder, or to enjoin any violation of such chapter or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, and 1292 of title 28. No costs shall be assessed for or against the Commission in any proceeding under this chapter brought by or against it in the Supreme Court or such other courts.

(June 6, 1934, ch. 404, title I, § 27, 48 Stat. 902; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

REFERENCES IN TEXT

This chapter referred to in text in the original read "this title". See References in Text note under section 78a of this title.

CODIFICATION

The words "the district court of the United States for the District of Columbia" following "The district courts of the United States" have been deleted as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of Title 28 which states that "The District of Columbia constitutes one judicial district".

Act June 25, 1936, substituted "district court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia".

Reference to "sections 1254, 1291, and 1292 of title 28" was substituted for "sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347)" on authority of Act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Jurisdiction of offenses and suits under—
- Investment Advisers Act of 1940, see section 80b-14 of this title.
- Investment Company Act of 1940, see section 80a-43 of this title.
- Public Utility Holding Company Act of 1935, see section 79y of this title.
- Securities Act of 1933, see section 77v of this title.
- Trust Indenture Act of 1939, see section 77vvv of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under rule 54, see note by Advisory Committee under rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

Costs, see rule 54.

One form of action, see rule 2.

FEDERAL RULES OF CRIMINAL PROCEDURE

Continuation of section under rule 18, see note by Advisory Committee under rule 18, Title 18, Appendix, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78s, 78eee of this title.

§ 78bb. Effect on existing law

(a) Addition of rights and remedies; recovery of actual damages; State securities commissions

The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this chapter shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of. Nothing in this chapter shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this chapter or the rules and regulations thereunder.

(b) Modification of disciplinary procedures

Nothing in this chapter shall be construed to modify existing law with regard to the binding effect (1) on any member of or participant in any self-regulatory organization of any action taken by the authorities of such organization to settle disputes between its members or participants, (2) on any municipal securities dealer or municipal securities broker of any action taken pursuant to a procedure established by the Municipal Securities Rulemaking Board to settle disputes between municipal securities dealers and municipal securities brokers, or (3) of any action described in paragraph (1) or (2) on any person who has agreed to be bound thereby.

(c) Continuing validity of disciplinary sanctions

The stay, setting aside, or modification pursuant to section 78s(e) of this title of any disciplinary sanction imposed by a self-regulatory organization or[1] a member thereof, person associated with a member, or participant therein, shall not affect the validity or force of any action taken as a result of such sanction by the self-regulatory organization prior to such stay, setting aside, or modification: *Provided,* That such action is not inconsistent with the provisions of this chapter or the rules or regulations thereunder. The rights of any person acting in good faith which arise out of any such action shall not be affected in any way by such stay, setting aside, or modification.

(d) Physical location of facilities of registered clearing agencies or registered transfer agents not to subject changes in beneficial or record ownership of securities to State or local taxes

No State or political subdivision thereof shall impose any tax on any change in beneficial or record ownership of securities effected through the facilities of a registered clearing agency or registered transfer agent or any nominee thereof or custodian therefor or upon the delivery or transfer of securities to or through or receipt from such agency or agent or any nominee thereof or custodian therefor, unless such change is[2] beneficial or record ownership or such transfer or delivery or receipt would otherwise be taxable by such State or political subdivision if the facilities of such registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor were not physically located in the taxing State or political subdivision. No State or political subdivision thereof shall impose any tax on securities which are deposited in or retained by a registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor, unless such securities would otherwise be taxable by such State or political subdivision if the facilities of such registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor were not physically located in the taxing State or political subdivision.

(e) Exchange, broker, and dealer commission; brokerage and research services

(1) No person using the mails, or any means or instrumentality of interstate commerce, in the exercise of investment discretion with respect to an account shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law unless expressly provided to the contrary by a law enacted by the Congress or any State subsequent to June 4, 1975, solely by reason of his having caused the account to pay a member of an exchange, broker, or dealer an amount of commission for effecting a securities transaction in

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[1] So in original, probably should be "on".

[2] So in original. Probably should read "in".

excess of the amount of commission another member of an exchange, broker, or dealer would have charged for effecting that transaction, if such person determined in good faith that such amount of commission was reasonable in relation to the value of the brokerage and research services provided by such member, broker, or dealer, viewed in terms of either that particular transaction or his overall responsibilities with respect to the accounts as to which he exercises investment discretion. This subsection is exclusive and plenary insofar as conduct is covered by the foregoing, unless otherwise expressly provided by contract: *Provided, however,* That nothing in this subsection shall be construed to impair or limit the power of the Commission under any other provision of this chapter or otherwise.

(2) A person exercising investment discretion with respect to an account shall make such disclosure of his policies and practices with respect to commissions that will be paid for effecting securities transactions, at such times and in such manner, as the appropriate regulatory agency, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) For purposes of this subsection a person provides brokerage and research services insofar as he—

(A) furnishes advice, either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities;

(B) furnishes analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; or

(C) effects securities transactions and performs functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by rules of the Commission or a self-regulatory organization of which such person is a member or person associated with a member or in which such person is a participant.

(June 6, 1934, ch. 404, title I, § 28, 48 Stat. 903; June 4, 1975, Pub. L. 94-29, § 21, 89 Stat. 160.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (c) and (e), in the original read "this title". See References in Text note under section 78a of this title.

AMENDMENTS

1975—Subsec. (b). Pub. L. 94-29, § 21(1), struck out provisions that nothing in this chapter be construed to modify existing law with regard to the binding effect on any member of an exchange of any disciplinary action taken by the authorities of an exchange and made the remaining provisions applicable to all members of and participants in all self-regulatory organizations as well as municipal securities professionals.

Subsecs. (c) to (e). Pub. L. 94-29, § 21(2), added subsecs. (c) to (e).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

FEDERAL RULES OF CIVIL PROCEDURE

One form of action, see rule 2, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 78cc. Validity of contracts

(a) Waiver provisions

Any condition, stipulation, or provision binding any person to waive compliance with any provision of this chapter or of any rule or regulation thereunder, or of any rule of an exchange required thereby shall be void.

(b) Contract provisions in violation of chapter

Every contract made in violation of any provision of this chapter or of any rule or regulation thereunder, and every contract (including any contract for listing a security on an exchange) heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this chapter or any rule or regulation thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, or regulation, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule, or regulation: *Provided,* (A) That no contract shall be void by reason of this subsection because of any violation of any rule or regulation prescribed pursuant to paragraph (2) or (3) of subsection (c) of section 78*o* of this title, and (B) that no contract shall be deemed to be void by reason of this subsection in any action maintained in reliance upon this subsection, by any person to or for whom any broker or dealer sells, or from or for whom any broker or dealer purchases, a security in violation of any rule or regulation prescribed pursuant to paragraph (1) of subsection (c) of section 78*o* of this title, unless such action is brought within one year after the discovery that such sale or purchase involves such violation and within three years after such violation.

(c) Validity of loans, extensions of credit, and creation of liens; actual knowledge of violation

Nothing in this chapter shall be construed (1) to affect the validity of any loan or extension of credit (or any extension or renewal thereof) made or of any lien created prior or subsequent to the enactment of this chapter, unless at the time of the making of such loan or extension of credit (or extension or renewal thereof) or the creating of such lien, the person making such loan or extension of credit (or extension or renewal thereof) or acquiring such lien shall have actual knowledge of facts by reason of which the making of such loan or extension of credit (or extension or renewal thereof) or the acquisition of such lien is a violation of the provisions of this chapter or any rule or regulation thereunder, or (2) to afford a defense to the collection of any debt or obligation or the enforcement of any lien by any person who shall have acquired such debt, obligation, or lien in good faith for value and without actual knowledge of the violation of any provision of this chapter or any rule or regulation thereunder affecting the legality of such debt, obligation, or lien.

(June 6, 1934, ch. 404, title I, § 29, 48 Stat. 903; June 25, 1938, ch. 677, § 3, 52 Stat. 1076.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b) and (c), in the original read "this title". See References in Text note under section 78a of this title.

AMENDMENTS

1938—Subsec. (b). Act June 25, 1938, added the proviso clause thereto.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78*o*-4 of this title.

§ 78dd. Foreign securities exchanges

(a) It shall be unlawful for any broker or dealer, directly or indirectly, to make use of the mails or of any means or instrumentality of interstate commerce for the purpose of effecting on an exchange not within or subject to the jurisdiction of the United States, any transaction in any security the issuer of which is a resident of, or is organized under the laws of, or has its principal place of business in, a place within or subject to the jurisdiction of the United States, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors or to prevent the evasion of this chapter.

(b) The provisions of this chapter or of any rule or regulation thereunder shall not apply to any person insofar as he transacts a business in securities without the jurisdiction of the United States, unless he transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of this chapter.

(June 6, 1934, ch. 404, title I, § 30, 48 Stat. 904.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), in the original read "this title". See References in Text note under section 78a of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Effective date, see section 78hh of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78hh of this title.

§ 78ee. Transaction fees

Every national securities exchange shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregate dollar amount of the sales of securities (other than bonds, debentures, and other evidences of indebtedness) transacted on such national securities exchange during each preceding calendar year to which this section applies. Every registered broker and dealer shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregate dollar amount of the sales of securities registered on a national securities exchange (other than bonds, debentures, and other evidences of indebtedness) transacted by such broker or dealer otherwise than on such an exchange during each preceding calendar year: *Provided, however,* That no payment shall be required for any calendar year in which such payment would be less than one hundred dollars. The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system.

(June 6, 1934, ch. 404, title I, § 31, 48 Stat. 904; Mar. 17, 1944, ch. 101, 58 Stat. 117; June 4, 1975, Pub. L. 94-29, § 22, 89 Stat. 162.)

AMENDMENTS

1975—Pub. L. 94-29 extended provisions requiring the payment of fees to include transactions in listed securities which occur in the over-the-counter market.

1944—Act Mar. 17, 1944, added material within parentheses, exempting from the payment of the fee securities designated for exemption by the Secretary of the Treasury.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective Jan. 1, 1976, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 78ff. Penalties

(a) Any person who willfully violates any provision of this chapter, or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this chapter, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 78*o* of this title, or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than $10,000, or imprisoned not more than five years, or both, except that when such person is an exchange, a fine not exceeding $500,000 may be imposed; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.

(b) Any issuer which fails to file information, documents, or reports required to be filed under subsection (d) of section 78*o* of this title or any rule or regulation thereunder shall forfeit to the United States the sum of $100 for each and every day such failure to file shall continue. Such forfeiture, which shall be in lieu of any criminal penalty for such failure to file which might be deemed to arise under subsection (a) of this section, shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States.

(June 6, 1934, ch. 404, title I, § 32, 48 Stat. 904; May 27, 1936, ch. 462, § 9, 49 Stat. 1380; June 25, 1938, ch. 677, § 4, 52 Stat. 1076; Aug. 20, 1964, Pub. L. 88-467, § 11, 78 Stat. 580; June 4, 1975, Pub. L. 94-29, §§ 23, 27(b), 89 Stat. 162, 163.)

References in Text

This chapter, referred to in subsec. (a), in the original read "this title". See References in Text not under section 78a of this title.

Amendments

1975—Subsec. (a). Pub. L. 94-29, §§ 23(1), 27(b), inserted "or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof," and substituted "or imprisoned not more than five years" for "or imprisoned not more than two years".

Subsec. (c). Pub. L. 94-29, § 23(2), struck out subsec. (c) which rendered this section inapplicable to violations of any rule or regulation prescribed pursuant to paragraph (3) of subsection (c) of section 78*o* of this title.

1964—Subsec. (b). Pub. L. 88-467 substituted "required to be filed under" for "pursuant to an undertaking contained in a registration statement as provided in" and inserted "or any rule or regulation thereunder" following "section 78*o* of this title."

1938—Subsec. (c). Act June 25, 1938, added subsec. (c).

1936—Subsec. (a). Act May 27, 1936, inserted "or any undertaking contained in a registration statement as provided in subsection (d) of section 78*o* of this title".

Subsec. (b). Act May 27, 1936, added subsec. (b).

Effective Date of 1975 Amendment

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

Effective Date of 1964 Amendment

Amendment by Pub. L. 88-467 effective Aug. 20, 1964, see section 13 of Pub. L. 88-467, set out as a note under section 78c of this title.

Cross References

Effective date, see section 78hh-1 of this title.

Penalties under—

- Investment Advisers Act of 1940, see section 80b-17 of this title.
- Investment Company Act of 1940, see section 80a-48 of this title.
- Public Utility Holding Company Act of 1935, see section 79z-3 of this title.
- Securities Act of 1933, see section 77x of this title.
- Trust Indenture Act of 1939, see section 77yyy of this title.

§ 78gg. Separability of provisions

If any provision of this chapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(June 6, 1934, ch. 404, title I, § 33, 48 Stat. 905.)

References in Text

This chapter, referred to in text, in the original read "this Act". See References in Text note under section 78a of this title.

§ 78hh. Effective date

This chapter shall become effective on July 1, 1934, except that sections 78f and 78*l*(b to e) of this title shall become effective on September 1, 1934; and sections 78e, 78g, 78h, 78i(a)(6), 78j, 78k, 78*l*(a), 78m, 78n, 78*o*, 78p, 78q, 78r, 78s, and 78dd of this title shall become effective on October 1, 1934.

(June 6, 1934, ch. 404, title I, § 34, 48 Stat. 905.)

References in Text

This chapter, referred to in text, in the original read "This Act". See References in Text note under section 78a of this title.

§ 78hh-1. Effective date of certain sections

This Act shall become effective on May 27, 1936; except that clause (2) of subsection (f) of section 78*l* of this title, and subsections (a) and (d) of section 78*o* of this title, shall become effective ninety days after May 27, 1936, and that clause (3) of subsection (f) of section 78*l* of this title shall become effective six months after May 27, 1936.

(May 27, 1936, ch. 462, § 12, 49 Stat. 1380.)

References in Text

This Act, referred to in text, is act May 27, 1936, ch. 462, 49 Stat. 1375. Such act enacted this section and sections 78*l*-1, 78*o*-1, and 78*o*-2 of this title, and amended sections 78*l*, 78*o*, 78q, 78r, 78t, 78u, 78w, and 78ff of this title.

Codification

Section was not enacted as a part of the Securities Exchange Act of 1934 which comprises this chapter.

§§ 78ii, 78jj. Omitted

Codification

Section 78ii, act June 6, 1934, ch. 404, title II, § 210, 48 Stat. 908, transferred the powers, duties and functions of the Federal Trade Commission under subchapter I of chapter 2A of this title to the Securities and Exchange Commission. Pending proceedings before the Federal Trade Commission were continued before the Securities and Exchange Commission.

Section 78jj, act June 6, 1934, ch. 404, title II, § 211, 48 Stat. 909, provided for a study and report by the Securities and Exchange Commission of reorganization proceedings. Study as basis for Trust Indenture Act of 1939, see section 77bbb of this title.

§ 78kk. Authorization of appropriations

There are hereby authorized to be appropriated to carry out the functions, powers, and duties of the Commission not to exceed $51,000,000 for the fiscal year ending June 30, 1976 and not to exceed $55,000,000 for the fiscal year ending September 30, 1977. For fiscal years succeeding the 1977 fiscal year, there may be appropriated such sums as the Congress may hereafter authorize by law.

(June 6, 1934, ch. 404, title I, § 35, as added June 4, 1975, Pub. L. 94-29, § 24, 89 Stat. 162.)

EFFECTIVE DATE

Section effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

CHAPTER 2B-1—SECURITIES INVESTOR PROTECTION

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- 78*lll*. Definitions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 78u of this title.

§ 78aaa. Short title

This chapter may be cited as the "Securities Investor Protection Act of 1970".

(Pub. L. 91-598, § 1(a), Dec. 30, 1970, 84 Stat. 1636.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "This Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables volume.

§ 78bbb. Application of Securities Exchange Act of 1934

Except as otherwise provided in this chapter, the provisions of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] (hereinafter referred to as the "1934 Act") apply as if this chapter constituted an amendment to, and was included as a section of, such Act.

(Pub. L. 91-598, § 2, Dec. 30, 1970, 84 Stat. 1637.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables volume.

The Securities Exchange Act of 1934, referred to in text, is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

§ 78ccc. Securities Investor Protection Corporation

(a) Creation

There is hereby established a body corporate to be known as "Securities Investor Protection Corporation" (hereafter in this chapter referred to as "SIPC"). SIPC shall be a nonprofit corporation and shall have succession until dissolved by act of the Congress. SIPC shall—

(1) not be an agency or establishment of the United States Government;

(2) be a membership corporation the members of which shall be—

(A) all persons registered as brokers or dealers under section 78*o*(b) of this title, and

(B) all persons who are members of a national securities exchange,

other than persons whose business as a broker or dealer consists exclusively of (i) the distribution of shares of registered open end investment companies or unit investment trusts, (ii) the sale of variable annuities, (iii) the business of insurance, or (iv) the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts; and

(3) except as otherwise provided in this chapter, be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29-1001 and fol.).

(b) Powers

In addition to the powers granted to SIPC elsewhere in this chapter, SIPC shall have the power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any court, State, or Federal;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) subject to the provisions of this chapter to adopt, amend, and repeal, by its Board of Directors, bylaws and rules relating to the conduct of its business and the exercise of all other rights and powers granted to it by this chapter;

(4) to conduct its business (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to it by this chapter in any State or other jurisdiction without regard to any qualification, licensing, or other statute in such State or other jurisdiction;

(5) to lease, purchase, accept gifts or donations of or otherwise acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange or otherwise dispose of, any property, real, personal or mixed, or any interest therein, wherever situated;

(6) subject to the provisions of subsection (c) of this section, to elect or appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, require bonds for them and fix the penalty thereof;

(7) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to SIPC by this chapter; and

(8) by bylaw, to establish its fiscal year.

(c) Board of Directors

(1) Functions

SIPC shall have a Board of Directors which, subject to the provisions of this chapter, shall determine the policies which shall govern the operations of SIPC.

(2) Number and appointment

The Board of Directors shall consist of seven persons as follows:

(A) One director shall be appointed by the Secretary of the Treasury from among the officers and employees of the Department of the Treasury.

(B) One director shall be appointed by the Federal Reserve Board from among the officers and employees of the Federal Reserve Board.

(C) Five directors shall be appointed by the President, by and with the advice and consent of the Senate, as follows—

(i) three such directors shall be selected from among persons who are associated with, and representative of different aspects of, the securities industry, not all of whom shall be from the same geographical area of the United States, and

(ii) two such directors shall be selected from the general public from among persons who are not associated with any broker or dealer, within the meaning of paragraph (18) of section 78c(a) of this title, or similarly associated with a national securities exchange or other securities industry group and who have not had any such association during the two years preceding appointment.

(3) Chairman and vice chairman

The President shall designate a Chairman and Vice Chairman from among those directors appointed under paragraph (2)(C)(ii) of this subsection.

(4) Terms

(A) Except as provided in subparagraphs (B) and (C), each director shall be appointed for a term of three years.

(B) Of the directors first appointed under paragraph (2)—

(i) two shall hold office for a term expiring on December 31, 1971,

(ii) two shall hold office for a term expiring on December 31, 1972, and

(iii) three shall hold office for a term expiring on December 31, 1973,

as designated by the President at the time they take office. Such designation shall be made in a manner which will assure that no two persons appointed under the authority of the same clause of paragraph (2)(C) shall have terms which expire simultaneously.

(C) A vacancy in the Board shall be filled in the same manner as the original appointment was made. Any director appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A director may serve after the expiration of his term until his successor has taken office.

(5) Compensation, etc.

All matters relating to compensation of directors and the determination of dollar volume of trading on exchanges shall be as provided in the bylaws of SIPC.

(d) Meetings of Board

The Board of Directors shall meet at the call of its Chairman, or as otherwise provided by the bylaws of SIPC.

(e) Bylaws

(1) As soon as practicable but not later than forty-five days after December 30, 1970, the Board of Directors shall adopt initial bylaws and rules relating to the conduct of the business of SIPC and the exercise of the rights and powers granted to it by this chapter, and shall file a copy thereof with the Commission.

Thereafter, the Board of Directors may alter, supplement, or repeal any existing bylaw or rule and may adopt additional bylaws and rules, and in each such case shall file a copy thereof with the Commission.

(2) Each such initial bylaw or rule, alteration, supplement, or repeal, and additional bylaw or rule shall take effect upon the thirtieth day (or such later date as SIPC may designate) after the filing of the copy thereof with the Commission or upon such earlier date as the Commission may determine, unless the Commission shall, by notice to SIPC setting forth the reasons therefor, disapprove the same, in whole or in part, as being contrary to the public interest or contrary to the purposes of this chapter.

(3) The Commission may, by such rules or regulations as it determines to be necessary or appropriate in the public interest or to effectuate the purposes of this chapter, require the adoption, amendment, alteration of, supplement to or rescision of any bylaw or rule by SIPC, whenever adopted.

(f) Other members

(1) Any person who is a broker, dealer, or member of a national securities exchange and who is excluded from membership in SIPC under subsection (a) of this section may become a member of SIPC under such conditions and upon such terms as SIPC shall require.

(2) Notwithstanding anything contained in subsections (c) and (d) of section 78ddd of this title any person who becomes a member of the corporation under this subsection shall be subject to such assessments as SIPC determines to be equitable.

(Pub. L. 91-598, § 3, Dec. 30, 1970, 84 Stat. 1637.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (c) and (e), in the original read "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78ddd, 78ggg of this title.

§ 78ddd. SIPC Fund

(a) In general

(1) Establishment of fund

SIPC shall establish a "SIPC Fund" (hereinafter in this chapter referred to as the "fund"). All amounts received by SIPC (other than amounts paid directly to any lender pursuant to any pledge securing a borrowing by SIPC) shall be deposited in the fund, and all expenditures made by SIPC shall be made out of the fund.

(2) Balance of the fund

The balance of the fund at any time shall consist of the aggregate at such time of the following items:

(A) Cash on hand or on deposit.

(B) Amounts invested in United States Government or agency securities.

(C) Confirmed lines of credit.

(3) Confirmed lines of credit

For purposes of this section, the amount of confirmed lines of credit as of any time is the aggregate amount which SIPC at such time has the right to borrow from banks and other financial institutions under confirmed lines of credit or other written agreements which provide that moneys so borrowed are to be repayable by SIPC not less than one year from the time of such borrowings (including, for purposes of determining when such moneys are repayable, all rights of extension, refunding, or renewal at the election of SIPC).

(b) Initial required balance for fund

Within one hundred and twenty days from December 30, 1970, the balance of the fund shall aggregate not less than $75,000,000, less any amounts expended from the fund within that period.

(c) Assessments

(1) Initial assessments

Each member of SIPC shall pay to SIPC, or the collection agent for SIPC specified in section 78iii(a) of this title, on or before the one hundred and twentieth day following December 30, 1970, an assessment equal to one-eighth of 1 per centum of the gross revenues from the securities business of such member during the calendar year 1969, or if the Commission shall determine that, for purposes of assessment pursuant to this paragraph, a lesser percentage of gross revenues from the securities business is appropriate for any class or classes of members (taking into account relevant factors, including but not limited to types of business done and nature of securities sold), such lesser percentages as the Commission, by rule or regulation, shall establish for such class or classes, but in no event less than one sixteenth of 1 per centum for any such class. In no event shall any assessment upon a member pursuant to this paragraph be less than $150.

(2) General assessment authority

SIPC shall, by bylaw or rule, impose upon its members such assessments as, after consultation with self-regulatory organizations, SIPC may deem necessary and appropriate to establish and maintain the fund and to repay any borrowings by SIPC. Any assessments so made shall be in conformity with contractual obligations made by SIPC in connection with any borrowing incurred by SIPC. Subject to paragraph (3) and subsection (d)(1)(A) of this section, any such assessment upon the members, or any one or more classes thereof, may, in whole or in part, be based upon or measured by (A) the amount of their gross revenues from the securities business, or (B) all or any of the following factors: the amount or composition of their gross revenues from the securities business, the number or dollar volume of transactions effected by them, the number of customer accounts maintained by them or the amounts of cash and securities in such accounts, their net capital, the nature of their activities (whether in the securities business or otherwise) and the consequent risks, or other relevant factors.

(3) Limitations

Notwithstanding any other provision of this chapter (other than section 78ccc(f) of this title)—

(A) no assessment shall be made upon a member otherwise than pursuant to paragraph (1) or (2) of this subsection,

(B) an assessment may be made under paragraph (2) of this subsection at a rate in excess of one-half of one per centum during any twelve-month period if SIPC determines, in accordance with a bylaw or rule, that such rate of assessment during such period will not have a material adverse effect on the financial condition of its members or their customers, except that no assessments shall be made pursuant to such paragraph upon a member which require payments during any such period which exceed in the aggregate one per centum of such member's gross revenues from the securities business for such period, and

(C) no assessment shall include any charge based upon the member's activities (i) in the distribution of shares of registered open end investment companies or unit investment trusts, (ii) in the sale of variable annuities, (iii) in the business of insurance, or (iv) in the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts.

(d) Requirements respecting assessments and lines of credit

(1) Assessments

(A) ½ of 1 percent assessment

Subject to subsection (c)(3) of this section, SIPC shall impose upon each of its members an assessment at a rate of not less than one-half of 1 per centum per annum of the gross revenues from the securities business of such member—

(i) until the balance of the fund aggregates not less than $150,000,000 (or such other amount as the Commission may determine in the public interest),

(ii) during any period when there is outstanding borrowing by SIPC pursuant to subsection (f) or subsection (g) of this section, and

(iii) whenever the balance of the fund (exclusive of confirmed lines of credit) is below $100,000,000 (or such other amount as the Commission may determine in the public interest).

(B) ¼ of 1 percent assessment

During any period during which—

(i) the balance of the fund (exclusive of confirmed lines of credit) aggregates less than $150,000,000 (or such other amount as the Commission has determined under paragraph (2)(B)), or

(ii) SIPC is required under paragraph (2)(B) to phase out of the fund all confirmed lines of credit,

SIPC shall endeavor to make assessments in such a manner that the aggregate assessments payable by its members during such period shall not be less than one-fourth of 1 per centum per annum of the aggregate gross revenues from the securities business for such members during such period.

(2) Lines of credit

(A) $50,000,000 limit after 1973

After December 31, 1973, confirmed lines of credit shall not constitute more than $50,000,000 of the balance of the fund.

(B) Phaseout requirement

When the balance of the fund aggregates $150,000,000 (or such other amount as the Commission may determine in the public interest) SIPC shall phase out of the fund all confirmed lines of credit.

(e) Prior trusts; overpayments and underpayments

(1) Prior trusts

There may be contributed and transferred at any time to SIPC any funds held by any trust established by a self-regulatory organization prior to January 1, 1970, and the amounts so contributed and transferred shall be applied, as may be determined by SIPC with approval of the Commission, as a reduction in the amounts payable pursuant to assessments made or to be made by SIPC upon members of such self-regulatory organization pursuant to subsection (c)(2) of this section. No such reduction shall be made at any time when there is outstanding any borrowing by SIPC pursuant to subsection (g) of this section or any borrowings under confirmed lines of credit.

(2) Overpayments

To the extent that any payment by a member exceeds the maximum rate permitted by subsection (c) of this section, the excess shall not be recoverable except against future payments by such member in accordance with a bylaw or rule of SIPC.

(3) Underpayments

If a member fails to pay when due all or any part of an assessment made upon such member, the unpaid portion thereof shall bear interest at such rate as may be determined by SIPC by bylaw or rule.

(f) Borrowing authority

SIPC shall have the power to borrow moneys and to evidence such borrowed moneys by the issuance of bonds, notes, or other evidences of indebtedness, all upon such terms and conditions as the Board of Directors may determine in the case of a borrowing other than pursuant to subsection (g) of this section, or as may be prescribed by the Commission in the case of a borrowing pursuant to subsection (g) of this section. The interest payable on a borrowing pursuant to subsection (g) of this section shall be equal to the interest payable on the related notes or other obligations issued by the Commission to the Secretary of the Treasury. To secure the payment of the principal of, and interest and premium, if any, on, all bonds, notes, or other evidences of indebtedness so issued, SIPC may make agreements with respect to the amount of future assessments to be made upon members and may pledge all or any part of the assets of SIPC and of the assessments made or to be made upon members. Any such pledge of future assessments shall (subject to any prior pledge) be valid and binding from the time that it is made, and the assessments so pledged and thereafter received by SIPC, or any examining authority as collection agent for SIPC, shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind against SIPC or such collection agent whether pursuant to this chapter, in tort, contract or otherwise, irrespective of whether such parties have notice thereof. During any period when a borrowing by SIPC pursuant to subsection (g) of this section is outstanding, no pledge of any assessment upon a member to secure any bonds, notes, or other evidences of indebtedness issued other than pursuant to subsection (g) of this section shall be effective as to the excess of the payments under the assessment on such member during any twelve-month period over one-fourth of 1 per centum of such member's gross revenues from the securities business for such period. Neither the instrument by which a pledge is authorized or created, nor any statement or other document relative thereto, need be filed or recorded in any State or other jurisdiction. The Commission may by rule or regulation provide for the filing of any instrument by which a pledge or borrowing is authorized or created, but the failure to make or any defect in any such filing shall not affect the validity of such pledge or borrowing.

(g) SEC loans to SIPC

In the event that the fund is or may reasonably appear to be insufficient for the purposes of this chapter, the Commission is authorized to make loans to SIPC. At the time of application for, and as a condition to, any such loan, SIPC shall file with the Commission a statement with respect to the anticipated use of the proceeds of the loan. If the Commission determines that such loan is necessary for the protection of customers of brokers or dealers and the maintenance of confidence in the United States securities markets and the SIPC has submitted a plan which provides as reasonable an assurance of prompt repayment as may be feasible under the circumstances, then the Commission shall so certify to the Secretary of the Treasury, and issue notes or other obligations to the Secretary of the Treasury pursuant to subsection (h) of this section. If the Commission determines that the amount or time for payment of the assessments pursuant to such plan would not satisfactorily provide for the repayment of such loan, it may, by rules and regulations, impose upon the purchasers of equity securities in transactions on national securities exchanges and in the over-the-counter markets a transaction fee in such amount as at any time or from time to time it may determine to be appropriate, but not exceeding one-fiftieth of 1 per centum of the purchase price of the securities. No such fee shall be imposed on a transaction (as defined by rules or regulations of the Commission) of less than $5,000. For the purposes of the next preceding sentence, (A) the fee shall be based upon the total dollar amount of each purchase; (B) the fee shall not apply to any purchase on a national securities exchange or in an over-the-counter market by or for the account of a broker or dealer registered under section 78*o*(b) of this title or a member of a national securities exchange unless such purchase is for an investment account of such broker, dealer, or member (and for this purpose any transfer from a trading account to an investment account shall be deemed a purchase at fair market value); and (C) the Commission by rules and regulations may exempt any transaction in the over-the-counter markets in order to provide for the assessment of fees on purchasers in transactions in those markets on a basis comparable to the assessment of fees on purchasers in transactions on national securities exchanges. Such fee shall be collected by the broker or dealer effecting the transaction for or with the purchaser and shall be paid to SIPC in the same manner as assessments imposed pursuant to subsection (c) of this section.

(h) SEC notes issued to Treasury

To enable the Commission to make loans under subsection (g) of this section, the Commission is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount of not to exceed $1,000,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury may reduce the interest rate if he determines such reduction to be in the national interest. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(i) "Gross revenues" defined

(1) In general

For purposes of this chapter, the term "gross revenues from the securities business" means the sum of (but without duplication):

(A) commissions earned in connection with transactions in securities effected for customers as agent (net of commissions paid to other brokers and dealers in connection with such transactions) and markups in respect of purchases or sales of securities as principal,

(B) charges for executing or clearing transactions in securities for other brokers and dealers,

(C) the net realized gain, if any, from principal transactions in securities in trading accounts,

(D) the net profit, if any, from the management of or participation in the underwriting or distribution of securities,

(E) interest earned on customers' securities accounts,

(F) fees for investment advisory services (except when rendered to one or more registered investment companies or insurance company separate accounts) or account supervision in respect of securities,

(G) fees for the solicitation of proxies with respect to, or tenders or exchanges of, securities,

(H) income from service charges or other surcharges in respect of securities,

(I) except as otherwise provided by rule or regulation of the Commission, dividends and interest received on securities in investment accounts of the broker or dealer,

(J) fees in connection with put, call, and other option transactions in securities, and

(K) fees and other income for all other investment banking services.

Such term does not include revenues received by a broker or dealer in connection with the distribution of shares of a registered open end investment company or unit investment trust or revenues derived by a broker or dealer from the sale of variable annuities or from the conduct of the business of insurance.

(2) Consolidated group

Except as otherwise provided by SIPC by bylaw or rule, gross revenues from the securities business of a broker or dealer shall be computed on a consolidated basis for such broker or dealer and all its subsidiaries, and the operations of a broker or dealer shall include those of any business to which such broker or dealer has succeeded.

(3) Meaning of terms not defined

SIPC may by bylaw or rule define all terms used in this subsection insofar as such definitions are not inconsistent with the provisions of this subsection.

(Pub. L. 91-598, § 4, Dec. 30, 1970, 84 Stat. 1639.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (c)(3), (f), (y), and (i)(1), in the original read "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables volume.

The Second Liberty Bond Act, as amended, referred to in subsec. (h), is act Sept. 24, 1917, ch. 56, 40 Stat. 288. For classification of this Act to the Code, see References in Text note under section 774 of Title 31, Money and Finance, and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78ccc, 78hhh, 78iii, 78kkk of this title.

§ 78eee. Protection of customers

(a) Determination of need of protection

(1) Notice to SIPC

If the Commission or any self-regulatory organization is aware of facts which lead it to believe that any broker or dealer subject to its regulation is in or is approaching financial difficulty, it shall immediately notify SIPC, and, if such notification is by a self-regulatory organization, the Commission.

(2) Action by SIPC

If SIPC determines that any member has failed or is in danger of failing to meet its obligations to customers and that there exists one or more of the conditions specified in subsection (b)(1)(A) of this section, SIPC, upon notice to such member, may apply to any court of competent jurisdiction specified in section 78aa or 78u(e) of this title for a decree adjudicating that customers of such member are in need of the protection provided by this chapter.

(3) Effect of other pending actions

An application under paragraph (2)—

(A) with the consent of the Commission, may be combined with any action brought by the Commission including an action by it for a temporary receiver pending an appointment of a trustee under subsection (b)(3) of this section, and

(B) may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding or any proceeding to reorganize, conserve, or liquidate such member or its property, or any proceeding to enforce a lien against property of such member.

(b) Court action

(1) Issuance of decree

(A) Findings by court

A court to which application is made pursuant to subsection (a)(2) of this section shall grant the application and issue a decree adjudicating that customers of the member named in the application are in need of protection under this chapter if it finds that such member—

(i) is insolvent within the meaning of section 1(19) of the Bankruptcy Act [11 U.S.C. 1(19)], or is unable to meet its obligations as they mature, or

(ii) has committed an act of bankruptcy within the meaning of section 3 of the Bankruptcy Act [11 U.S.C. 21], or

(iii) is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such member has been appointed, or

(iv) is not in compliance with applicable requirements under the 1934 Act [15 U.S.C. 78a et seq.] or rules or regulations of the Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of customers' securities, or

(v) is unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules or regulations.

(B) Uncontested, etc., applications

If within three business days after the filing of an application pursuant to subsection (a)(2) of this section, or such other period as the court may order, the debtor shall consent to or fail to contest such application or shall fail to show facts sufficient to contorvert[1] any material allegation of such application, the court shall forthwith grant the application and issue a decree adjudicating that customers of the member named in the application are in need of protection under this chapter.

(2) Exclusive jurisdiction over debtor

Upon the filing of an application pursuant to subsection (a)(2) of this section, the court to which application is made shall have exclusive jurisdiction of the debtor involved and its property wherever located with the powers, to the extent consistent with the purposes of this chapter, of a court of bankruptcy and of a court in a proceeding under chapter X of the Bankruptcy Act [11 U.S.C. 501 et seq.]. Pending an adjudication under paragraph (1) such court shall stay, and upon appointment by it of a trustee as provided in paragraph (3) such court shall continue the stay of, any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the debtor or its property and any other suit against any receiver, conservator, or trustee of the debtor or its property. Pending such adjudication and upon the appointment by it of such trustee, the court may stay any proceeding to enforce a lien against property of the debtor or any other suit against the debtor. Pending such adjudication, such court may appoint a temporary receiver.

(3) Appointment of trustee

If the court grants an application and makes an adjudication under paragraph (1), the court shall forthwith appoint as trustee for the liquidation of the business of the debtor in accordance with section 78fff of this title, and as attorney for such trustee, such persons as SIPC shall specify. No person shall be appointed as such trustee or attorney if such person is not "disinterested" within the meaning of section 158 of the Bankruptcy Act [11 U.S.C. 558].

(4) Debtor and filing date defined

For purposes of this chapter—

(A) Debtor

The term "debtor" means a member of SIPC in respect of whom an application has been filed pursuant to subsection (a)(2) of this section.

(B) Filing date

The term "filing date" means the date on which an application with respect to any debtor is filed under subsection (a)(2) of this section; except that if—

(i) a petition was filed before such date by or against the debtor under the Bankruptcy Act [11 U.S.C. 1 et seq.], or

(ii) the debtor is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver trustee, or liquidator for such debtor was appointed which proceeding was commenced before the date on which such application was filed,

then the term "filing date" means the date on which such petition was filed or such proceeding commenced.

(c) SEC participation in proceedings

The Commission may, on its own motion, file notice of its appearance in any proceeding under this chapter and may thereafter participate as a party.

(Pub. L. 91-598, § 5, Dec. 30, 1970, 84 Stat. 1644.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2), (b)(1), (2), (4), and (c), in the original read "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables volume.

The 1934 Act, referred to in subsec. (b)(1)(A)(iv), is the Securities Exchange Act of 1934, approved June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to chapter 2B (§ 78a et seq.) of this title. For complete classification of the Act to the Code, see section 78a of this title and Tables volume.

Chapter X of the Bankruptcy Act, referred to in subsec. (b)(2), is classified to chapter 10 (§ 501 et seq.) of Title 11, Bankruptcy.

The Bankruptcy Act, referred to in subsec. (b)(4)(B)(i), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which is classified to section 1 et seq. of title 11.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78fff, 78lll of this title.

§ 78fff. Liquidation proceedings

(a) General purposes of liquidation proceeding

The purposes of any proceeding in which a trustee has been appointed under section 78eee(b)(3) of this title (hereafter in this section referred to as a "liquidation proceeding") shall be:

(1) as promptly as possible after such appointment and in accordance with the provisions of this section—

(A) to return specifically identifiable property to the customers of the debtor entitled thereto;

(B) to distribute the single and separate fund, and (in advance thereof or concurrently therewith) pay to customers moneys advanced by SIPC, as provided in subsection (f) of this section;

(2) to operate the business of the debtor in order to complete open contractual commitments of the debtor pursuant to subsection (d) of this section;

(3) to enforce rights of subrogation as provided in this chapter; and

(4) to liquidate the business of the debtor.

(b) Powers and duties of trustee

(1) Trustee powers

A trustee appointed under section 78eee(b)(3) of this title (hereinafter referred to as "trustee") shall be vested with the same powers and title with respect to the debtor and the property of the debtor, and the same rights to avoid preferences, as a trustee in bankruptcy and a trustee under chapter X of the Bankruptcy Act [11 U.S.C. 501 et seq.] have with respect to a bankrupt and a chapter X debtor. In addition, a trustee shall have the right—

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[1] So in original. Should probably read "controvert".

(A) with the approval of SIPC, to hire and fix the compensation of all personnel (including officers and employees of the debtor and of its examining authority) and other persons (including but not limited to accountants) that are deemed by such trustee necessary for all or any purposes of the liquidation proceeding, and

(B) to operate the business of the debtor in order to complete open contractual commitments pursuant to subsection (d) of this section,

and no approval of the court shall be required therefor.

(2) Trustee duties

Except as inconsistent with the provisions of this chapter or otherwise ordered by the court, a trustee shall be subject to the same duties as a trustee appointed under section 44 of the Bankruptcy Act [11 U.S.C. 72], except that a trustee may, but shall have no duty to, reduce to money any securities in the single and separate fund (provided under subsection (c)(2)(B) of this section) or in the general estate of the debtor.

(c) Application of Bankruptcy Act

(1) General provisions applicable

Except as inconsistent with the provisions of this chapter and except that in no event shall a plan of reorganization be formulated, a liquidation proceeding shall be conducted in accordance with, and as though it were being conducted under, the provisions of chapter X [11 U.S.C. 501 et seq.] and such of the provisions (other than section 60e [11 U.S.C. 96(e)]) of chapters I to VII [11 U.S.C. 1 et seq., 11 et seq., 21 et seq., 41 et seq., 61 et seq., 91 et seq., and 101 et seq.] inclusive, of the Bankruptcy Act as section 102 of chapter X [11 U.S.C. 502] would make applicable if an order of the court had been entered directing that bankruptcy be proceeded with pursuant to the provisions of such chapters I to VII, inclusive; except that the court may, for such period as may be appropriate, stay enforcement of, but shall not abrogate, the rights provided in section 68 of the Bankruptcy Act [11 U.S.C. 108] and the right to enforce a valid, nonpreferential lien or pledge against the property of the debtor. For purposes of applying the Bankruptcy Act [11 U.S.C. 1 et seq.] in carrying out this section, any reference in the Bankruptcy Act to the date of commencement of proceedings under the Bankruptcy Act shall be deemed to be a reference to the filing date (as defined in section 78eee(b)(4)(B) of this title).

(2) Special provisions

The following subparagraphs of this paragraph shall apply to a liquidation proceeding in lieu of section 60e of the Bankruptcy Act [11 U.S.C. 96(e)]:

(A) Definitions

Except as otherwise expressly provided in this section, for purposes of this section and the application of the Bankruptcy Act [11 U.S.C. 1 et seq.] to a liquidation proceeding—

(i) "property" includes cash and securities, whether or not negotiable and all property of a similar character;

(ii) "customers" of a debtor means persons (including persons with whom the debtor deals as principal or agent) who have claims on account of securities received, acquired, or held by the debtor from or for the account of such persons (I) for safekeeping, or (II) with a view to sale, or (III) to cover consummated sales, or (IV) pursuant to purchases, or (V) as collateral security, or (VI) by way of loans of securities by such persons to the debtor, and shall include persons who have claims against the debtor arising out of sales or conversions of such securities, and shall include any person who has deposited cash with the debtor for the purpose of purchasing securities, but shall not include any person to the extent that such person has a claim for property which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor or is subordinated to the claims of creditors of the debtor;

(iii) "cash customer" means, with respect to any securities or cash, customers entitled to immediate possession of such securities or cash without the payment of any sum to the debtor, and for purposes of this clause, the same person may be a cash customer with reference to certain securities or cash and not a cash customer with reference to other securities or cash;

(iv) "net equity" of a customer's account or accounts means the dollar amount thereof determined by giving effect to open contractual commitments completed as provided in subsection (d) of this section, by excluding any specifically identifiable property reclaimable by the customer, and by subtracting the indebtedness, if any, of the customer to the debtor from the sum which would have been owing by the debtor to the customer had the debtor liquidated, by sale or purchase on the filing date, all other securities and contractual commitments of the customer, and for purposes of this definition, accounts held by a customer in separate capacities shall be deemed to be accounts of separate customers; and

(v) "securities" has the same meaning as such term has under section 60e of the Bankruptcy Act [11 U.S.C. 96(e)].

(B) Single and separate fund

All property at any time received, acquired, or held by or for the account of a debtor from or for the amount of customers except cash customers who are able to identify specifically their property in the manner prescribed in subparagraph (C), and the proceeds of all customers' property transferred by the debtor, including property unlawfully converted, shall constitute a single and separate fund; and all customers except such cash customers shall constitute a single and separate class of creditors, entitled to share ratably in such fund on the basis of their respective net equities as of the filing date and in priority to all other payments, except that (i) there shall be repaid to SIPC, in priority to all other claims payable from such single and separate fund, the amount of all advances made by SIPC to the trustee to permit the completion of open contractual commitments pursuant to subsection (d) of this section, and (ii) to the extent that any other assets of the debtor may be available therefor or as otherwise ordered by the court, all costs and expenses specified in clauses (1) and (2) of section 64a of the Bankruptcy Act [11 U.S.C. 104(a)(1) and (2)] shall be paid from such single and separate fund in priority to the claims of such single and separate class of creditors, and any moneys advanced by SIPC for such costs and expenses shall be recouped as such. If such single and separate fund shall not be sufficient to pay in full the claims of such single and separate class of creditors, the creditors of such class shall be entitled, to the extent only of their respective unpaid balances, to share in the general estate with general creditors. In, or for the purpose of, distributing such fund, all property other than cash shall be valued as of the close of business on the filing date. To the greatest extent considered practicable by the trustee, the trustee shall deliver in payment of claims of customers for their net equities based upon securities held on the filing date in their accounts (after giving effect to open contractual commitments completed as hereinafter provided), securities of the same class and series of an issuer ratably up to the respective amounts which were so held in such accounts. Any property remaining after the liquidation of a lien or pledge made by a debtor shall be apportioned between his general estate and the single and separate fund in the proportion in which the general property of the debtor and the property of his customers contributed to such lien or pledge.

(C) Specifically identifiable property

The trustee shall return specifically identifiable property to the customers of the debtor, entitled thereto. No cash or securities at any time received, acquired, or held by or for the account of a debtor from or for the accounts of customers shall for the purposes of this paragraph be deemed to be specifically identified, unless such property remained in its identical form in the debtor's possession until the filing date, or unless such property was allocated to or physically set aside for such customers on the filing date. In determining whether property was allocated to or physically set aside for such customers, it shall be sufficient that on the filing date:

(i) securities are segregated individually, or in bulk for customers collectively;

(ii) in the case of securities held for the account of the debtor as part of any central certificate service of any clearing corporation or any similar depositary—

(I) the records of the debtor show or there is otherwise established to the satisfaction of the trustee that all or a specified part of the securities held by such clearing corporation or other similar depositary are held for specified customers, or for customers collectively, and

(II) such records of the debtor also show or there is otherwise established to the satisfaction of the trustee the identities of the particular customers entitled to receive specified numbers or units of such securities so held for customers collectively; or

(iii) such property is held for the account of customers of the debtor in such other manner as the Commission, for the protection of customers and other creditors on a fair and equitable basis, by rule or regulation shall have determined to be sufficiently identifiable as the property of such customers.

If there is any shortage in securities of the same class and series of an issuer so segregated in bulk or otherwise held for customers pursuant to this subparagraph, as compared to the aggregate rights of particular customers to receive securities of such class and series, the respective interests of such customers in such securities of such class and series shall be prorated, without prejudice, however, to the satisfaction of any claim for deficiencies as otherwise provided in this section.

(D) Where such single and separate fund is not sufficient to pay in full the claims of such single and separate class of creditors, a transfer by a debtor of any property which, except for such transfer, would have been a part of such fund may be recovered by the trustee for the benefit of such fund, if such transfer is voidable or void under the provisions of the Bankruptcy Act [11 U.S.C. 1 et seq.]. For the purpose of such recovery, the property so transferred shall be deemed to have been the property of the debtor and, if such transfer was made to a customer or for his benefit, such customer shall be deemed to have been a creditor, the laws of any State to the contrary notwithstanding. Subject to the provisions of paragraph (D), if any securities received or acquired by a debtor from a cash customer are transferred by the debtor, such customer shall not have any specific interest in or specific right to any securities of like kind on hand on the filing date, but such securities of like kind or the proceeds thereof shall become part of such single and separate fund.

(d) Completion of open contractual commitments

The trustee shall complete those contractual commitments of the debtor relating to transactions in securities which were made in the ordinary course of debtor's business and which were outstanding on the filing date—

(1) in which a customer had an interest, except those commitments the completion of which the Commission shall have determined by rule or regulation not to be in the public interest, or

(2) in which a customer did not have an interest, to the extent that the Commission shall by rule or regulation have determined the completion of such commitments to be in the public interest.

For purposes of this subsection (but not for any other purpose of this chapter) (i) the term "customer" means any person other than a broker or dealer, and (ii) a customer shall be deemed to have had an interest in a transaction if a broker participating in the transaction was acting as agent for a customer, or if a dealer participating in the transaction held a customer's order which was to be executed as a part of the transaction. All property at any time received, acquired, or held by or for the account of the debtor (except for cash or securities that are specifically identifiable as the property of particular customers and are not the subject of an open contractual commitment), and all property in the single and separate fund, shall be available to complete open contractual commitments pursuant to this subsection. Securities purchased or cash received by the trustee upon completion of any such commitment shall constitute specifically identifiable property of a customer to the extent that such commitment was completed with property which constituted specifically identifiable property of such customer on the filing date, or was paid or delivered by or for the account of such customer to the debtor or the trustee after the filing date.

(e) Notice

Promptly after his appointment, the trustee shall cause notice of the commencement of proceedings under this section to be published in accordance with a designation of the court, made in accordance with the requirements of section 28 of the Bankruptcy Act [11 U.S.C. 51], and at the same time shall cause to be mailed a copy of such notice to each of the customers of the debtor as their addresses shall appear from the debtor's books and records. Except as the trustee may otherwise permit, claims for specifically identifiable property (other than securities registered in the name of the claimant or segregated for him in his individual name) or claims payable from property in the single and separate fund or payable with moneys advanced by SIPC, shall not be paid other than from the general estate of the debtor unless filed within such period of time (not exceeding sixty days after such publication) as may be fixed by the court, and no claim shall be allowed after the time specified in section 57 of the Bankruptcy Act [11 U.S.C. 93]. Subject to the foregoing, and without limiting the powers and duties of the trustee to discharge promptly obligations as specified in this section, the court may make appropriate provision for proof and enforcement of all claims against the debtor including those of any subrogee.

(f) SIPC advances to trustee

(1) Advances for customers' claims

In order to provide for prompt payment and satisfaction of the net equities of customers of debtor, SIPC shall advance to the trustee such moneys as may be required to pay or otherwise satisfy claims in full of each customer, but not to exceed $50,000 for such customer; except that—

(A) insofar as all or any portion of the net equity of a customer is a claim for cash, as distinct from securities, the amount advanced by reason of such claim to cash shall not exceed $20,000;

(B) a customer who holds accounts with the debtor in separate capacities shall be deemed to be a different customer in each capacity;

(C) no such advance shall be made by SIPC to the trustee to pay or otherwise satisfy, directly or indirectly, any claims of any customer who is a general partner, officer, or director of the debtor, the beneficial owner of 5 per centum or more of any class of equity security of the debtor (other than a nonconvertible stock having fixed preferential dividend and liquidation rights) or limited partner with a participation of 5 per centum or more in the net assets or net profits of the debtor; and

(D) no such advance shall be made by SIPC to the trustee to pay or otherwise satisfy claims of any customer who is a broker or dealer or bank other than to the extent that it shall be established to the satisfaction of the trustee, from the books and records of the debtor or from the books and records of a broker or dealer or bank or otherwise, that claims of such broker or dealer or bank against the debtor arise out of transactions for customers of such broker or dealer or bank, in which event, each such customer of such broker or dealer or bank shall be deemed a separate customer of the debtor.

To the extent that moneys are advanced by SIPC to the trustee to pay the claims of customers, SIPC shall be subrogated to the claims of such customers with the rights and priorities provided in this section.

(2) Other advances

SIPC may advance to the trustee such moneys as may be required to effectuate subsection (b)(1)(A) of this section. SIPC shall advance to the trustee such moneys as (with those available pursuant to subsection (d) of this section) may be required to effectuate subsection (d) of this section.

(g) Payments to customers; no proof of claim required

It shall be the duty of the trustee to discharge promptly, in accordance with the provisions of this section, all obligations of the debtor to each of its customers relating to, or net equities based upon, securities or cash by the delivery of securities or the effecting of payments to such customer (subject to subsection (f)(1) of this section, to the extent that such payments are made out of advances from SIPC under such subsection) insofar as such obligations are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee, whether or not such customer shall have filed formal proof of such claim. For that purpose the court among other things shall—

(1) in respect of claims relating to securities or cash, authorize the trustee to make payment out of moneys made available to the trustee by SIPC notwithstanding the fact that there shall not have been any showing or determination that there are sufficient

funds of the debtor available to make such payment; and

(2) in respect of claims relating to, or net equities based upon, securities of a class and series of an issuer, which are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee, authorize the trustee to deliver securities of such class and series if and to the extent available to satisfy such claims in whole or in part, with partial deliveries to be made pro rata to the greatest extent considered practicable by the trustee.

Any payment or delivery of property pursuant to this subsection may be conditioned upon the trustee requiring claimants to execute in a form to be determined by the trustee, appropriate receipts, supporting affidavits, and assignments, but shall be without prejudice to the right of any claimant to file formal proof of claim within the period specified in subsection (e) of this section for any balance of securities or cash to which he may deem himself entitled.

(h) Proof of claim by associates and others

The provisions of this section permitting discharge of obligations of the debtor to pay cash or to deliver securities without formal proof of claim shall not apply to any person "associated" with the debtor as defined in section 78c(a)(18) of this title, to any beneficial owner of 5 per centum or more of the voting stock of the debtor, or to any member of the immediate family of any of the foregoing.

(i) Reports by trustee to court

All reports to the court by a trustee (other than reports required to be filed pursuant to section 167(3) of the Bankruptcy Act [11 U.S.C. 567(3)] shall be in such form and detail as, having due regard to the requirements of section 78q of this title and the rules and regulations thereunder and the magnitude of items and transactions involved in connection with the operations of a broker or dealer, the Commission shall determine by rules and regulations to present fairly the results of such proceeding as at the dates or for the periods covered by such reports.

(j) Effect of chapter on claims

Except as otherwise provided in this section, nothing in this section shall limit the right of any person to establish by formal proof such claims as such person may have to payment, or to delivery of specific securities, without resort to moneys advanced by SIPC to the trustee.

(Pub. L. 91-598, § 6, Dec. 30, 1970, 84 Stat. 1646.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3), (b)(2), (c)(1), and (d), in the original read "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables volume.

Chapter X of the Bankruptcy Act, referred to in subsecs. (b)(1), (c)(1), is classified to chapter 10 (§ 501 et seq.) of Title 11, Bankruptcy.

Chapters I to VII, inclusive, of the Bankruptcy Act, referred to in subsec. (c)(1), are classified to chapters 1 to 7 (§§ 1 et seq., 11 et seq., 21 et seq., 41 et seq., 61 et seq., 91 et seq., and 101 et seq., respectively) of title 11.

The Bankruptcy Act, referred to in subsec. (c)(1), (2)(A), (D), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which is classified to section 1 et seq. of title 11.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 78eee of this title.

§ 78ggg. SEC functions

(a) Administrative procedure

Determinations of the Commission, for purposes of making rules or regulations pursuant to section 78ccc(e) and section 78iii(f) of this title shall be after appropriate notice and opportunity for a hearing, and for submission of views of interested persons in accordance with the rulemaking procedures specified in section 553 of title 5, but the holding of a hearing shall not prevent adoption of any such rule or regulation upon expiration of the notice period specified in subsection (d) of such section and shall not be required to be on a record within the meaning of subchapter II of chapter 5 of such title.

(b) Enforcement of actions

In the event of the refusal of SIPC to commit its funds or otherwise to act for the protection of customers of any member of SIPC, the Commission may apply to the district court of the United States in which the principal office of SIPC is located for an order requiring SIPC to discharge its obligations under this chapter and for such other relief as the court may deem appropriate to carry out the purposes of this chapter.

(c) Examinations and reports

(1) Examination of SIPC, etc.

The Commission may make such examinations and inspections of SIPC and require SIPC to furnish it with such reports and records or copies thereof as the Commission may consider necessary or appropriate in the public interest or to effectuate the purposes of this chapter.

(2) Reports from SIPC

As soon as practicable after the close of each fiscal year, SIPC shall submit to the Commission a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this chapter, during such fiscal year. Such report shall include financial statements setting forth the financial position of SIPC at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The financial statements so included shall be examined by an independent public accountant or firm of independent public accountants, selected by SIPC and satisfactory to the Commission, and shall be accompanied by the report thereon of such accountant or firm. The Commission shall transmit such report to the President and the Congress with such comment thereon as the Commission may deem appropriate.

(Pub. L. 91-598, § 7(a)-(c), Dec. 30, 1970, 84 Stat. 1652, 1653.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), in the original read "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables volume.

§ 78hhh. Examining authority functions

Each member of SIPC shall file with such member's examining authority such information (including reports of, and information with respect to, the gross revenues from the securities business of such member, including the composition thereof, transactions in securities effected by such member, and other information with respect to such member's activities, whether in the securities business or otherwise, including customer accounts maintained, net capital employed, and activities conducted) as SIPC may determine to be necessary or appropriate for the purpose of making assessments under section 78ddd of this title. The examining authority shall file with SIPC all or such part of such information (and such compilations and analyses thereof) as SIPC, by bylaw or rule, shall prescribe. No application, report, or document filed pursuant to this section shall be deemed to be filed pursuant to section 78r of this title.

(Pub. L. 91-598, § 8, Dec. 30, 1970, 84 Stat. 1653.)

§ 78iii. Functions of self-regulatory organizations

(a) Collecting agent

Each self-regulatory organization shall act as collection agent for SIPC to collect the assessments payable by all members of SIPC for whom such self-regulatory organization is the examining authority, and members of SIPC who are not members of any self-regulatory organization shall make payment direct to SIPC. An examining authority shall be obligated to remit to SIPC assessments made under section 78ddd of this title only to the extent that payments of such assessments are received by such examining authority.

(b) Immunity

No self-regulatory organization shall have any liability to any person for any action taken or omitted in good faith pursuant to section 78eee(a)(1) of this title.

(c) Inspections

The self-regulatory organization of which a member of SIPC is a member shall inspect or examine such member for compliance with applicable financial responsibility rules, except that if a member of SIPC is a member of more than one self-regulatory organization, the Commission, pursuant to section 78q(d) of this title, shall designate one of such self-regulatory organizations as responsible for the examination of such member for compliance with applicable financial responsibility rules.

(d) Reports

There shall be filed with SIPC by the self-regulatory organizations such reports of inspections or examinations of the members of SIPC (or copies thereof) as may be designated by SIPC by bylaw or rule.

(e) Consultation

SIPC shall consult and cooperate with the self-regulatory organizations toward the end:

(1) that there may be developed and carried into effect procedures reasonably designed to detect approaching financial difficulty upon the part of any member of SIPC;

(2) that, as nearly as may be practicable, examinations to ascertain whether members of SIPC are in compliance with applicable financial responsibility rules will be conducted by the self-regulatory organizations under appropriate standards (both as to method and scope) and reports of such examinations will, where appropriate, be standard in form; and

(3) that, as frequently as may be practicable under the circumstances, each member of SIPC will file financial information with, and be examined by, the self-regulatory organization which is the examining authority for such member.

(f) Financial condition of members

Notwithstanding the limitations contained in sections 15A and 19 of the 1934 Act [15 U.S.C. 78o-3, 78s] and without limiting its powers under those or other sections of the 1934 Act [15 U.S.C. 78a et seq.], the Commission may by such rules or regulations as it determines to be necessary or appropriate in the public interest and to effectuate the purposes of this chapter—

(1) require any self-regulatory organization to adopt any specified alteration of or supplement to its rules, practices, and procedures with respect to the frequency and scope of inspections and examinations relating to the financial condition of members of such self-regulatory organization and the selection and qualification of examiners;

(2) require any self-regulatory organization to furnish SIPC and the Commission with reports and records or copies thereof relating to the financial condition of members of such self-regulatory organization; and

(3) require any self-regulatory organization to inspect or examine any members of such self-regulatory organization in relation to the financial condition of such members. In the case of a broker or dealer who is a member of more than one self-regulatory organization the Commission, to the extent practicable, shall avoid requiring duplication of examinations, inspections, and reports.

(Pub. L. 91-598, § 9, Dec. 30, 1970, 84 Stat. 1654; Pub. L. 94-29, § 26, June 4, 1975, 89 Stat. 163.)

REFERENCES IN TEXT

The 1934 Act, referred to in subsec. (f), is the Securities Exchange Act of 1934, approved June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

This chapter, referred to in subsec. (f), in the original read "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables volume.

AMENDMENTS

1975—Subsec. (c). Pub. L. 94-29 directed the Commission to designate the self-regulatory organization to be responsible for enforcing applicable rules with respect to any firm which is a member of more than one self-regulatory organization.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78ddd, 78ggg of this title.

§ 78jjj. Prohibited acts

(a) Failure to pay assessment, etc.

If a member of SIPC shall fail to file any report or information required pursuant to this chapter, or shall fail to pay when due all or any part of an assessment made upon such member pursuant to this chapter, and such failure shall not have been cured, by the filing of such report or information or by the making of such payment, together with interest thereon, within five days after receipt by such member of written notice of such failure given by or on behalf of SIPC, it shall be unlawful for such member, unless specifically authorized by the Commission, to engage in business as a broker or dealer. If such member denies that he owes all or any part of the amount specified in such notice, he may after payment of the full amount so specified commence an action against SIPC in the appropriate United States district court to recover the amount he denies owing.

(b) Engaging in business after appointment of trustee

It shall be unlawful for any broker or dealer for whom a trustee has been appointed pursuant to this chapter to engage thereafter in business as a broker or dealer, unless the Commission otherwise determines in the public interest. The Commission may by order bar or suspend for any period, any officer, director, general partner, owner of 10 per centum or more of the voting securities, or controlling person of any broker or dealer for whom a trustee has been appointed pursuant to this chapter from being or becoming associated with a broker or dealer, if after appropriate notice and opportunity for hearing, the Commission shall determine such bar or suspension to be in the public interest.

(c) Embezzlement, etc., of assets of SIPC

Whoever steals, unlawfully abstracts, unlawfully and willfully converts to his own use or to the use of another, or embezzles any of the moneys, securities, or other assets of SIPC shall be fined not more than $50,000 or imprisoned not more than five years or both.

(Pub. L. 91-598, § 10, Dec. 30, 1970, 84 Stat. 1655.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), in the original read "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables volume.

§ 78kkk. Miscellaneous provisions

(a) Public inspection of reports

Any notice, report, or other document filed with SIPC pursuant to this chapter shall be available for public inspection unless SIPC or the Commission shall determine that disclosure thereof is not in the public interest. Nothing herein shall act to deny documents or information to the Congress of the United States or the committees of either House having jurisdiction over financial institutions, securities regulation, or related matters under the rules of each body. Nor shall the Commission be denied any document or information which the Commission, in its judgment, needs.

(b) Application of chapter to foreign members

Except as otherwise provided by rule or regulation of the Commission, if the head office of a member is located, and the member's principal business is conducted, outside the United States, the provisions of this chapter shall apply to such member only in respect of the business of such member conducted in the United States.

(c) Liability of members of SIPC

Except for such assessments as may be made upon such member pursuant to the provisions of section 78ddd of this title, no member of SIPC shall have any liability under this chapter as a member of SIPC for, or in connection with, any act or omission of any other broker or dealer whether in connection with the conduct of the business or affairs of such broker or dealer or otherwise and, without limiting the generality of the foregoing, no member shall have any liability for or in respect of any indebtedness or other liability of SIPC.

(d) Liability of SIPC and Directors

Neither SIPC nor any of its Directors shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter contemplated by this chapter.

(e) Advertising

SIPC shall by bylaw or rule prescribe the manner in which a member of SIPC may display any sign or signs (or include in any advertisement a statement) relating to the protection to customers and their accounts, or any other protections, afforded under this chapter. No member may display any such sign, or include in an advertisement any such statement, except in accordance with such bylaws and rules.

(f) SIPC exempt from taxation

SIPC, its property, its franchise, capital, reserves, surplus, and its income, shall be exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of SIPC shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed. Assessments made upon a member of SIPC shall constitute ordinary and necessary expenses in carrying on the business of such member for the purpose of section 162(a) of title 26. The contribution and transfer to SIPC of funds or securities held by any trust established by a national securities exchange prior to January 1, 1970, for the purpose of providing assistance to customers of members of such exchange, shall not result in any taxable gain to such trust or give rise to any taxable income to any member of SIPC under any provision of title 26, nor shall such contribution or transfer, or any reduction in assessments made pursuant to this chapter, in any way affect the status, as ordinary and necessary expenses under section 162(a) of title 26, of any contributions made to such trust by such exchange at any time prior to such transfer. Upon dissolution of SIPC, none of its net assets shall inure to the benefit of any of its members.

(g) Section 78t(a) of this title not to apply

The provisions of subsection (a) of section 78t of this title shall not apply to any liability under or in connection with this chapter.

(h) SEC study of unsafe or unsound practices

Not later than twelve months after December 30, 1970, the Commission shall compile a list of unsafe or unsound practices by members of SIPC in conducting their business and report to the Congress (1) the steps being taken under the authority of existing law to eliminate those practices and (2) recommendations concerning additional legislation which may be needed to eliminate those unsafe or unsound practices.

(Pub. L. 91-598, § 11, Dec. 30, 1970, 84 Stat. 1655.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) to (g), in the original read "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables volume.

§ 78*lll*. Definitions

For purposes of this chapter:

(1) Self-regulatory organization

The term "self-regulatory organization" means a national securities exchange or a national securities association registered pursuant to subsection (b) of section 78*o*-3 of this title.

(2) Financial responsibility rules

The term "financial responsibility rules" means the rules and regulations pertaining to financial responsibility and related practices which are applicable to a broker or dealer, as prescribed by the Commission under subsection (c)(3) of section 78*o* of this title or prescribed by a national securities exchange.

(3) Examining authority

The term "examining authority" means, with respect to any member of SIPC, the self-regulatory organization which inspects or examines such member of SIPC or the Commission if such member of SIPC is not a member of any self-regulatory organization.

(Pub. L. 91-598, § 12, Dec. 30, 1970, 84 Stat. 1656.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables volume.

CHAPTER 2C—PUBLIC UTILITY HOLDING COMPANIES

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 77ccc, 77hhh, 77jjj, 77kkk, 77www, 77zzz, 78u, 80a–2, 80a–3, 80a–37, 80a–49, 80b–2 of this title; title 16 section 825q; title 29 section 432.

§ 79. Short title of chapter

This chapter may be cited as the "Public Utility Holding Company Act of 1935."

(Aug. 26, 1935, ch. 687, title I, § 33, 49 Stat. 838.)

CROSS REFERENCES

Corporation of Foreign Bondholders Act, 1933, see section 77mm of this title.

Investment Advisers Act of 1940, see section 80b-20 of this title.

Investment Company Act of 1940, see section 80a-51 of this title.

Securities Act of 1933, see section 77a of this title.

Securities Exchange Act of 1934, see section 78a of this title.

Trust Indenture Act of 1939, see section 77aaa of this title.

§ 79a. Necessity for control of holding companies

(a) Interstate nature of holding companies

Public-utility holding companies and their subsidiary companies are affected with a national public interest in that, among other things, (1) their securities are widely marketed and distributed by means of the mails and instrumentalities of interstate commerce and are sold to a large number of investors in different States; (2) their service, sales, construction, and other contracts and arrangements are often made and performed by means of the mails and instrumentalities of interstate commerce; (3) their subsidiary public-utility companies often sell and transport gas and electric energy by the use of means and instrumentalities of interstate commerce; (4) their practices in respect of and control over subsidiary companies often materially affect the interstate commerce in which those companies engage; (5) their activities extending over many States are not susceptible of effective control by any State and make difficult, if not impossible, effective State regulation of public-utility companies.

(b) Protection of investors and interests of consumers

Upon the basis of facts disclosed by the reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session), the reports of the Committee on Interstate and Foreign Commerce, House of Representatives, made pursuant to H. Res. 59 (Seventy-second Congress, first session) and H. J. Res. 572 (Seventy-second Congress, second session) and otherwise disclosed and ascertained, it is declared that the national public interest, the interest of investors in the securities of holding companies and their subsidiary companies and affiliates, and the interest of consumers of electric energy and natural and manufactured gas, are or may be adversely affected—

(1) when such investors cannot obtain the information necessary to appraise the financial position or earning power of the issuers, because of the absence of uniform standard accounts; when such securities are issued without the approval or consent of the States having jurisdiction over subsidiary public-utility companies; when such securities are issued upon the basis of fictitious or unsound asset values having no fair relation to the sums invested in or the earning capacity of the properties and upon the basis of paper profits from intercompany transactions, or in anticipation of excessive revenues from subsidiary public-utility companies; when such securities are issued by a subsidiary public-utility company under circumstances which subject such company to the burden of supporting an overcapitalized structure and tend to prevent voluntary rate reductions;

(2) when subsidiary public-utility companies are subjected to excessive charges for services, construction work, equipment, and materials, or enter into transactions in which evils result from an absence of arm's-length bargaining or from restraint of free and independent competition; when service, management, construction, and other contracts involve the allocation of charges among subsidiary public-utility companies in different States so as to present problems of regulation which cannot be dealt with effectively by the States;

(3) when control of subsidiary public-utility companies affects the accounting practices and rate, dividend, and other policies of such companies so as to complicate and obstruct State regulation of such companies, or when control of such companies is exerted through disproportionately small investment;

(4) when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties; or

(5) when in any other respect there is lack of economy of management and operation of public-utility companies or lack of efficiency and adequacy of service rendered by such companies, or lack of effective public regulation, or lack of economies in the raising of capital.

(c) Declaration of policy of chapter

When abuses of the character above enumerated become persistent and wide-spread the holding company becomes an agency which, unless regulated, is injurious to investors, consumers, and the general public; and it is declared to be the policy of this chapter, in accordance with which policy all the provisions of this chapter shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce; and for the purpose of effectuating such policy to compel the simplification of public-utility holding-company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems, and to provide as soon as practicable for the elimination of public-utility holding companies except as otherwise expressly provided in this chapter.

(Aug. 26, 1935, ch. 687, title I, § 1, 49 Stat. 803.)

CROSS REFERENCES

Findings and declaration of policy under Investment Company Act of 1940, see section 80a-1 of this title.

Findings under Investment Advisers Act of 1940, see section 80b-1 of this title.

Necessity for regulation under—
- Securities Exchange Act of 1934, see section 78b of this title.
- Trust Indenture Act of 1939, see section 77bbb of this title.

§ 79b. Definitions; application of chapter

(a) Definitions

When used in this chapter, unless the context otherwise requires—

(1) "Person" means an individual or company.

(2) "Company" means a corporation, a partnership, an association, a joint-stock company, a business trust, or an organized group of persons, whether incorporated or not; or any receiver, trustee, or other liquidating agent of any of the foregoing in his capacity as such.

(3) "Electric utility company" means any company which owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale, other than sale to tenants or employees of the company operating such facilities for their own use and not for resale. The Commission, upon application, shall by order declare a company operating any such facilities not to be an electric utility company if the Commission finds that (A) such company is primarily engaged in one or more businesses other than the business of an electric utility company, and by reason of the small amount of electric energy sold by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered an electric utility company for the purposes of this chapter, or (B) such company is one operating within a single State, and substantially all of its outstanding securities are owned directly or indirectly by another company to which such operating company sells or furnishes electric energy which it generates; such other company uses and does not resell such electric energy, is engaged primarily in manufacturing (other than the manufacturing of electric energy or gas) and is not controlled by any other company; and by reason of the small amount of electric energy sold or furnished by such operating company to other persons it is not necessary in the public interest or for the protection of investors or consumers that it be considered an electric utility company for the purposes of this chapter. The filing of an application hereunder in good faith shall exempt such company (and the owner of the facilities operated by such company) from the application of this paragraph until the Commission has acted upon such application. As a condition to the entry of any such order, and as a part thereof, the Commission may require application to be made periodically for a renewal of such order, and may require the filing of such periodic or special reports regarding the business of the company as the Commission may find necessary or appropriate to insure that such company continues to be entitled to such exemption during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke such order whenever it finds that the conditions specified in clause (A) or (B) of this paragraph are not satisfied in the case of such company. Any action of the Commission under the preceding sentence shall be by order. Application under this paragraph may be made by the company in respect of which the order is to be issued or by the owner of the facilities operated by such company. Any order issued under this paragraph shall apply equally to such company and such owner. The Commission may by rules or regulations conditionally or unconditionally provide that any specified class or classes of companies which it determines to satisfy the conditions specified in clause (A) or (B) of this paragraph, and the owners of the facilities operated by such companies, shall not be deemed electric utility companies within the meaning of this paragraph.

(4) "Gas utility company" means any company which owns or operates facilities used for the distribution at retail (other than distribution only in enclosed portable containers, or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power. The Commission, upon application, shall by order declare a company operating any such facilities not to be a gas utility company if the Commission finds that (A) such company is primarily engaged in one or more businesses other than the business of a gas utility company, and (B) by reason of the small amount of natural or manufactured gas distributed at retail by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered a gas utility company for the purposes of this chapter. The filing of an application hereunder in good faith shall exempt such company (and the owner of the facilities operated by such company) from the application of this paragraph until the Commission has acted upon such application. As a condition to the entry of any such order, and as a part thereof, the Commission may require application to be made periodically for a renewal of such order, and may require the filing of such periodic or special reports regarding the business of the company as the Commission may find necessary or appropriate to insure that such company continues to be entitled to such exemption during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke such order whenever it finds that the conditions specified in clauses (A) and (B) of this paragraph are not satisfied in the case of such company. Any action of the Commission under the preceding sentence shall be by order. Application under this paragraph may be made by the company in respect of which the order is to be issued or by the owner of the facilities operated by such company. Any order issued under this paragraph shall apply equally to such company and such owner. The Commission may by rules or regulations conditionally or unconditionally provide that any specified class or classes of companies which it determines to satisfy the conditions specified in clauses (A) and (B) of this paragraph, and the owners of the facilities operated by such companies, shall not be deemed gas utility companies within the meaning of this paragraph.

(5) "Public-utility company" means an electric utility company or a gas utility company.

(6) "Commission" means the Securities and Exchange Commission.

(7) "Holding company" means—

(A) any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company or of a company which is a holding company by virtue of this clause or clause (B) of this paragraph, unless the Commission, as hereinafter provided, by order declares such company not to be a holding company; and

(B) any person which the Commission determines, after notice and opportunity for hearing, directly or indirectly to exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this chapter upon holding companies.

The Commission, upon application, shall by order declare that a company is not a holding company under clause (A) of this paragraph if the Commission finds that the applicant (i) does not, either alone or pursuant to an arrangement or understanding with one or more other persons, directly or indirectly control a public-utility or holding company either through one or more intermediary persons or by any means or device whatsoever, (ii) is not an intermediary company through which such control is exercised, and (iii) does not, directly or indirectly, exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this chapter upon holding companies. The filing of an application hereunder in good faith by a company other than a registered holding company shall exempt the applicant from any obligation, duty, or liability imposed in this chapter upon the applicant as a holding company, until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. As a condition to the entry of any order granting such application and as a part of any such order, the Commission may require the applicant to apply periodically for a renewal of such order and to do or refrain from doing such acts or things, in respect of exercise of voting rights, control over proxies, designation of officers and directors, existence of interlocking officers, directors and other relationships, and submission of periodic or special reports regarding affiliations or intercorporate relationships of the applicant, as the Commission may find necessary or appropriate to ensure that in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) of this paragraph are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application of the company affected, shall revoke the order declaring such company not to be a holding company whenever in its judgment any condition specified in clauses (i), (ii), or (iii) of this paragraph is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) of this paragraph are satisfied during the period for which such order is effective. Any action of the Commission under the preceding sentence shall be by order.

(8) "Subsidiary company" of a specified holding company means—

(A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by virtue of this clause or clause (B) of this paragraph), unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company; and

(B) any person the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this chapter upon subsidiary companies of holding companies.

The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) of this paragraph if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this chapter upon subsidiary companies of holding companies. The filing of an application hereunder in good faith shall exempt the applicant from any obligation, duty, or liability imposed in this chapter upon the applicant as a subsidiary company of such specified holding company until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. As a condition to the entry of, and as a part of, any order granting such application, the Commission may require the applicant to apply periodically for a renewal of such order and to file such periodic or special reports regarding the affiliations or intercorporate relationships of the applicant as the Commission may find necessary or appropriate to enable it to determine whether in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) of this paragraph are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke the order declaring such company not to be a subsidiary company whenever in its judgment any condition specified in clauses (i), (ii), or (iii) of this paragraph is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) of this paragraph are satisfied during the period for which such order is effective. Any action of the Commission under the preceding sentence shall be by order. Any application under this paragraph may be made by the holding company or the company in respect of which the order is to be entered, but as used in this paragraph the term "applicant" means only the company in respect of which the order is to be entered.

(9) "Holding-company system" means any holding company, together with all its subsidiary companies, and all mutual service companies (as defined in paragraph (13) of this subsection) of which such holding company or any subsidiary company thereof is a member company (as defined in paragraph (14) of this subsection).

(10) "Associate company" of a company means any company in the same holding-company system with such company.

(11) "Affiliate" of a specified company means—

(A) any person that directly or indirectly owns, controls, or holds with power to vote, 5 per centum or more of the outstanding voting securities of such specified company;

(B) any company 5 per centum or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by such specified company;

(C) any individual who is an officer or director of such specified company, or of any company which is an affiliate thereof under clause (A) of this paragraph; and

(D) any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to such specified company that there is liable to be such an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this chapter upon affiliates of a company.

(12) "Registered holding company" means a person whose registration is in effect under section 79e of this title.

(13) "Mutual service company" means a company approved as a mutual service company under section 79m of this title.

(14) "Member company" means a company which is a member of an association or group of companies mutually served by a mutual service company.

(15) "Director" means any director of a corporation or any individual who performs similar functions in respect of any company.

(16) "Security" means any note, draft, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, receiver's or trustee's certificate, or, in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, assumption of liability on, or warrant or right to subscribe to or purchase, any of the foregoing.

(17) "Voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company, or any security issued under or pursuant to any trust, agreement, or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such security are presently entitled to vote in the direction or management of the affairs of a company; and a specified per centum of the outstanding voting securities of a company means such amount of the outstanding voting securities of such company as entitles the holder or holders thereof to cast said specified per centum of the aggregate votes which the holders of all the outstanding voting securities of such company are entitled to cast in the direction or management of the affairs of such company.

(18) "Utility assets" means the facilities, in place, of any electric utility company or gas utility company for the production, transmission, transportation, or distribution of electric energy or natural or manufactured gas.

(19) "Service contract" means any contract, agreement, or understanding whereby a person undertakes to sell or furnish, for a charge, any managerial, financial, legal, engineering, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, or any other service, information, or data.

(20) "Sales contract" means any contract, agreement, or understanding whereby a

person undertakes to sell, lease, or furnish, for a charge, any goods, equipment, materials, supplies, appliances, or similar property. As used in this paragraph the term "property" does not include electric energy or natural or manufactured gas.

(21) "Construction contract" means any contract, agreement, or understanding for the construction, extension, improvement, maintenance, or repair of the facilities or any part thereof of a company for a charge.

(22) "Buy", "acquire", "acquisition", or "purchase" includes any purchase, acquisition by lease, exchange, merger, consolidation, or other acquisition.

(23) "Sale" or "sell" includes any sale, disposition by lease, exchange or pledge, or other disposition.

(24) "State" means any State of the United States or the District of Columbia.

(25) "United States", when used in a geographical sense, means the States.

(26) "State commission" means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State which under the law of such State has jurisdiction to regulate public-utility companies.

(27) "State securities commission" means any commission, board, agency, or officer, by whatever name designated, other than a State commission as defined in paragraph (26) of this subsection, which under the law of a State has jurisdiction to regulate, approve, or control the issue or sale of a security by a company.

(28) "Interstate commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(29) "Integrated public-utility system" means—

(A) As applied to electric utility companies, a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; and

(B) As applied to gas utility companies, a system consisting of one or more gas utility companies which are so located and related that substantial economies may be effectuated by being operated as a single coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation: *Provided*, That gas utility companies deriving natural gas from a common source of supply may be deemed to be included in a single area or region.

(b) Order of Commission essential to status as "holding company", "subsidiary company", or "affiliate"

No person shall be deemed to be a holding company under clause (B) of paragraph (7) of subsection (a) of this section, or a subsidiary company under clause (B) of paragraph (8) of such subsection, or an affiliate under clause (D) of paragraph (11) of such subsection, unless the Commission, after appropriate notice and opportunity for hearing, has issued an order declaring such person to be a holding company, a subsidiary company, or an affiliate, or declaring a class of which such person is a member to be affiliates. Such an order shall not become effective for at least thirty days after the mailing of a copy thereof to the person thereby declared to be a holding company, subsidiary company, or affiliate; or, in the case of determination of affiliates by classes, until at least thirty days after appropriate publication thereof in such manner as the Commission shall determine. Whenever the Commission, on its own motion or upon application by the person declared to be a holding company, subsidiary company, or affiliate, finds that the circumstances which gave rise to the issuance of any such order no longer exist, the Commission shall by order revoke such order.

(c) Chapter inapplicable to United States, States, or their governmental agencies

No provision in this chapter shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(Aug. 26, 1935, ch. 687, title I, § 2, 49 Stat. 804.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Affiliate, unlawful acquisition of security of public-utility company, see section 79i of this title.

Applicability to United States, States or their governmental agencies of—
  - Investment Advisers Act of 1940, see section 80b-2 of this title.
  - Investment Company Act of 1940, see section 80a-2 of this title.
  - Securities Exchange Act of 1934, see section 78c of this title.

Definition of terms—
  - Director, voting security, and sale or sell under Indenture Trust Act of 1939, see section 77ccc of this title.
  - Person, company, affiliated company, affiliated person, director, security, voting security, and sale or sell under Investment Company Act of 1940, see section 80a-2 of this title.

- Person, company, director, and security under Investment Advisers Act of 1940, see section 80b-2 of this title.
- Person, director, security, and sale or sell under Securities Exchange Act of 1934, see section 78c of this title.
- Person, security, and sale or sell under Securities Act of 1933, see section 77b of this title.
- Registered holding company, subsidiary company, associate company, and affiliate as applicable to issue or sale by registered holding company of its securities to indenture trustee of such company, see section 77kkk of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77kkk, 79i of this title; title 26 section 1083.

§ 79c. Exemptions regarding holding companies

(a) Exemption of holding companies

The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any holding company, and every subsidiary company thereof as such, from any provision or provisions of this chapter, unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers, if—

(1) such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized;

(2) such holding company is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto;

(3) such holding company is only incidentally a holding company, being primarily engaged or interested in one or more businesses other than the business of a public-utility company and (A) not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public-utility company, or (B) deriving a material part of its income from any one or more such subsidiary companies, if substantially all the outstanding securities of such companies are owned, directly or indirectly, by such holding company;

(4) such holding company is temporarily a holding company solely by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted or in connection with a bona fide arrangement for the underwriting or distribution of securities; or

(5) such holding company is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company.

(b) Exemption of subsidiary companies of holding company

The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any subsidiary company, as such, of a holding company from any provision or provisions of this chapter, the application of which to such subsidiary company the Commission finds is not necessary in the public interest or for the protection of investors, if such subsidiary company derives no material part of its income, directly or indirectly, from sources within the United States, and neither it nor any of its subsidiary companies is a public-utility company operating in the United States.

(c) Filing for exemption

Within a reasonable time after the receipt of an application for exemption under subsection (a) or (b) of this section, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of such application. The filing of an application in good faith under subsection (a) of this section by a person other than a registered holding company shall exempt the applicant from any obligation, duty, or liability imposed in this chapter upon the applicant as a holding company until the Commission has acted upon such application. The filing of an application in good faith under subsection (b) of this section shall exempt the applicant from any obligation, duty, or liability imposed in this chapter upon the applicant as a subsidiary company until the Commission has acted upon such application. Whenever the Commission, on its own motion, or upon application by the holding company or any subsidiary company thereof exempted by any order issued under subsection (a) of this section, or by the subsidiary company exempted by any order issued under subsection (b) of this section, finds that the circumstances which gave rise to the issuance of such order no longer exist, the Commission shall by order revoke such order.

(d) Exemption of specified class or classes of persons

The Commission may, by rules and regulations, conditionally or unconditionally exempt any specified class or classes of persons from the obligations, duties, or liabilities imposed upon such persons as subsidiary companies or affiliates under any provision or provisions of this chapter, and may provide within the extent of any such exemption that such specified class or classes of persons shall not be deemed subsidiary companies or affiliates within the meaning of any such provision or provisions, if and to the extent that it deems the exemption necessary or appropriate in the public interest or for the protection of investors or consumers and not contrary to the purposes of this chapter.

(Aug. 26, 1935, ch. 687, title I, § 3, 49 Stat. 810.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Rules and regulations, authority of Commission to make, issue, amend, and rescind, see section 79t of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 1081.

§ 79d. Transactions by unregistered holding companies

(a) After December 1, 1935, unless a holding company is registered under section 79e of this title, it shall be unlawful for such holding company, directly or indirectly—

(1) to sell, transport, transmit, or distribute, or own or operate any utility assets for the transportation, transmission, or distribution of, natural or manufactured gas or electric energy in interstate commerce;

(2) by use of the mails or any means or instrumentality of interstate commerce, to negotiate, enter into, or take any step in the performance of, any service, sales, or construction contract undertaking to perform services or construction work for, or sell goods to, any public-utility company or holding company;

(3) to distribute or make any public offering for sale or exchange of any security of such holding company, any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company, by use of the mails or any means or instrumentality of interstate commerce, or to sell any such security having reason to believe that such security, by use of the mails or any means or instrumentality of interstate commerce, will be distributed or made the subject of a public offering;

(4) by use of the mails or any means or instrumentality of interstate commerce, to acquire or negotiate for the acquisition of any security or utility assets of any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company;

(5) to engage in any business in interstate commerce; or

(6) to own, control, or hold with power to vote, any security of any subsidiary company thereof that does any of the acts enumerated in paragraphs (1) to (5) of this subsection.

(b) Every holding company which has outstanding any security any of which, by use of the mails or any means or instrumentality of interstate commerce, has been distributed or made the subject of a public offering subsequent to January 1, 1925, and any of which security was owned or held on October 1, 1935 (or, if such company is not a holding company on that date, on the date such company becomes a holding company) by persons not resident in the State in which such holding company is organized, shall register under section 79e of this title on or before December 1, 1935 or the thirtieth day after such company becomes a holding company, whichever date is later.

(Aug. 26, 1935, ch. 687, title I, § 4, 49 Stat. 812.)

CROSS REFERENCES

Fine for violation by holding company, see section 79z-3 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 79z-3 of this title.

§ 79e. Registration of holding companies

(a) Notification of registration; effective date of registration

On or at any time after October 1, 1935, any holding company or any person purposing to become a holding company may register by filing with the Commission a notification of registration, in such form as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. A person shall be deemed to be registered upon receipt by the Commission of such notification of registration.

(b) Registration statement; contents

It shall be the duty of every registered holding company to file with the Commission, within such reasonable time after registration as the Commission shall fix by rules and regulations or order, a registration statement in such form as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. Such registration statement shall include—

(1) such copies of the charter or articles of incorporation, partnership, or agreement, with all amendments thereto, and the bylaws, trust indentures, mortgages, underwriting arrangements, voting-trust agreements, and similar documents, by whatever name known, of or relating to the registrant or any of its associate companies as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers;

(2) such information in such form and in such detail relating to, and copies of such documents of or relating to, the registrant and its associate companies as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers in respect of—

(A) the organization and financial structure of such companies and the nature of their business;

(B) the terms, position, rights, and privileges of the different classes of their securities outstanding;

(C) the terms and underwriting arrangements under which their securities, during not more than the five preceding years, have been offered to the public or otherwise disposed of and the relations of underwriters to, and their interest in, such companies;

(D) the directors and officers of such companies, their remuneration, their interest in the securities of, their material contracts with, and their borrowings from, any of such companies;

(E) bonus and profit-sharing arrangements;

(F) material contracts, not made in the ordinary course of business, and service, sales, and construction contracts;

(G) options in respect of securities;

(H) balance sheets for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission, by an independent public accountant;

(I) profit and loss statements for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission, by an independent public accountant;

(3) such further information or documents regarding the registrant or its associate companies or the relations between them as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

(c) Preliminary registration statement prior to complete statement

The Commission by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of investors or consumers, may permit a registrant to file a preliminary registration statement without complying with the provisions of subsection (b) of this section; but every registrant shall file a complete registration statement with the Commission within such reasonable period of time as the Commission shall fix by rules and regulations or order, but not later than one year after the date of registration.

(d) Cessation of existence as holding company

Whenever the Commission, upon application, finds that a registered holding company has ceased to be a holding company, it shall so declare by order and upon the taking effect of such order the registration of such company shall, upon such terms and conditions as the Commission finds and in such order prescribes as necessary for the protection of investors, cease to be in effect. The denial of any such application by the Commission shall be by order.

(Aug. 26, 1935, ch. 687, title I, § 5, 49 Stat. 812.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Approval of acquisition of securities and utility assets and other interests, application for containing information and documents required by this section, see section 79j of this title.

Periodic and other reports, see section 79n of this title.

Registered holding company, definition of, see section 79b of this title.

Rules and regulations, authority of Commission to make, issue, amend, and rescind, see section 79t of this title.

Transactions by unregistered holding companies unlawful, see section 79d of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 79b, 79d, 79n of this title.

§ 79f. Unlawful transactions by registered companies

(a) Issuing, selling, or altering rights of stockholders to declaration

Except in accordance with a declaration effective under section 79g of this title and with the order under such section permitting such declaration to become effective, it shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly (1) to issue or sell any security of such company; or (2) to exercise any privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of an outstanding security of such company.

(b) Exemptions from operation of subsection (a)

The provisions of subsection (a) of this section shall not apply to the issue, renewal, or guaranty by a registered holding company or subsidiary company thereof of a note or draft (including the pledge of any security as collateral therefor) if such note or draft (1) is not part of a public offering, (2) matures or is renewed for not more than nine months, exclusive of days of grace, after the date of such issue, renewal, or guaranty thereof, and (3) aggregates (together with all other then outstanding notes and drafts of a maturity of nine months or less, exclusive of days of grace, as to which such company is primarily or secondarily liable) not more than 5 per centum of the principal amount and par value of the other securities of such company then outstanding, or such greater per centum thereof as the Commission upon application may by order authorize as necessary or appropriate in the public interest or for the protection of investors or consumers. In the case of securities having no principal amount or no par value, the value for the purposes of this subsection shall be the fair market value as of the date of issue. The Commission by rules and regulations or order, subject to such terms and conditions as it deems appropriate in the public interest or for the protection of investors or consumers, shall exempt from the provisions of subsection (a) of this section the issue or sale of any security by any subsidiary company of a registered holding company, if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company and have been expressly authorized by the State commission of the State in which such subsidiary company is organized and doing business, or if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company when such subsidiary company is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public utility company, or an investment company. The provisions of subsection (a) of this section shall not apply to the issue, by a registered holding company or subsidiary company thereof, of a security issued pursuant to the terms of any security outstanding on January 1, 1935, giving the holder of such outstanding security the right to convert such outstanding security into another security of the same issuer or of another person, or giving the right to subscribe to another security of the same issuer or another issuer. Within ten days after any issue, sale, renewal, or guaranty exempted from the application of subsection (a) of this section by or under authority of this subsection, such holding company or subsidiary company thereof shall file with the Commission a certificate of notification in such form and setting forth such of the information required in a declaration under section 79g of this title as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

(c) Selling from house to house; causing officer or employer of subsidiary to sell

It shall be unlawful, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, for any registered holding company or any subsidiary company thereof, directly or indirectly—

(1) to sell or offer for sale or to cause to be sold or offered for sale, from house to house, any security of such holding company; or

(2) to cause any officer or employee of any subsidiary company of such holding company to sell or cause to be sold any security of such holding company.

As used in this subsection the term "house" shall not include an office used for business purposes.

(Aug. 26, 1935, ch. 687, title I, § 6, 49 Stat. 814.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Declarations by registered companies in respect to security transactions, see section 79g of this title.

Rules and regulations, authority of Commission to make, issue, amend, and rescind, see section 79t of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 79g of this title.

§ 79g. Declarations by registered companies in respect to security transactions

(a) Contents

A registered holding company or subsidiary company thereof may file a declaration with the Commission, regarding any of the acts enumerated in subsection (a) of section 79f of this title, in such form as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. Such declaration shall include—

(1) such of the information and documents which are required to be filed in order to register a security under section 77g of this title, as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers; and

(2) such additional information, in such form and detail, and such documents regarding the declarant or any associate company thereof, the particular security and compliance with such State laws as may apply to the act in question as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

(b) Effective date of declaration; order of Commission

A declaration filed under this section shall become effective within such reasonable period of time after the filing thereof as the Commission shall fix by rules and regulations or order, unless the Commission prior to the expiration of such period shall have issued an order to the declarant to show cause why such declaration should become effective. Within a reasonable time after an opportunity for hearing upon an order to show cause under this subsection, unless the declarant shall withdraw its declaration, the Commission shall enter an order either permitting such declaration to become effective as filed or amended, or refusing to permit such declaration to become effective. Amendments to a declaration may be made upon such terms and conditions as the Commission may prescribe.

(c) Conditions precedent to permitting declaration to become effective

The Commission shall not permit a declaration regarding the issue or sale of a security to become effective unless it finds that—

(1) such security is (A) a common stock having a par value and being without preference as to dividends or distribution over, and having at least equal voting rights with, any outstanding security of the declarant; (B) a bond (i) secured by a first lien on physical property of the declarant, or (ii) secured by an obligation of a subsidiary company of the declarant secured by a first lien on physical property of such subsidiary company, or (iii) secured by any other assets of the type and character which the Commission by rules and regulations or order may prescribe as appropriate in the public interest or for the protection of investors; (C) a guaranty of, or assumption of liability on, a security of another company; or (D) a receiver's or trustee's certificate duly authorized by the appropriate court or courts; or

(2) such security is to be issued or sold solely (A) for the purpose of refunding, extending, exchanging, or discharging an outstanding security of the declarant and/or a predecessor company thereof or for the purpose of effecting a merger, consolidation, or other reorganization; (B) for the purpose of financing the business of the declarant as a public-utility company; (C) for the purpose of financing the business of the declarant, when the declarant is neither a holding company nor a public-utility company; and/or (D) for necessary and urgent corporate purposes of the declarant where the requirements of the provisions of paragraph (1) of this subsection would impose an unreasonable financial burden upon the declarant and are not necessary or appropriate in the public interest or for the protection of investors or consumers; or

(3) such security is one the issuance of which was authorized by the company prior to January 1, 1935, and which the Commission by rules and regulations or order authorizes as necessary or appropriate in the public interest or for the protection of investors or consumers.

(d) Conditions having permission of effectiveness

If the requirements of subsections (c) and (g) of this section are satisfied, the Commission shall permit a declaration regarding the issue or sale of a security to become effective unless the Commission finds that—

(1) the security is not reasonably adapted to the security structure of the declarant and other companies in the same holding-company system;

(2) the security is not reasonably adapted to the earning power of the declarant;

(3) financing by the issue and sale of the particular security is not necessary or appropriate to the economical and efficient operation of a business in which the applicant lawfully is engaged or has an interest;

(4) the fees, commissions, or other remuneration, to whomsoever paid, directly or indirectly, in connection with the issue, sale, or distribution of the security are not reasonable;

(5) in the case of a security that is a guaranty of, or assumption of liability on, a security of another company, the circumstances are such as to constitute the making of such guaranty or the assumption of such liability an improper risk for the declarant; or

(6) the terms and conditions of the issue or sale of the security are detrimental to the public interest or the interest of investors or consumers.

(e) Declaration regarding alterations, priorities, voting power, and other rights of security holders

If the requirements of subsection (g) of this section are satisfied, the Commission shall permit a declaration to become effective regarding the exercise of a privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of an outstanding security unless the Commission finds that such exercise of such privilege or right will result in an unfair or inequitable distribution of voting power among holders of the securities of the declarant or is otherwise detrimental to the public interest or the interest of investors or consumers.

(f) Order permitting declaration to become effective

Any order permitting a declaration to become effective may contain such terms and conditions as the Commission finds necessary to assure compliance with the conditions specified in this section.

(g) Compliance with State laws as condition to permission of effectiveness

If a State commission or State securities commission, having jurisdiction over any of the acts enumerated in subsection (a) of section 79f of this title, shall inform the Commission, upon request by the Commission for an opinion or otherwise, that State laws applicable to the act in question have not been complied with, the Commission shall not permit a declaration regarding the act in question to become effective until and unless the Commission is satisfied that such compliance has been effected.

(Aug. 26, 1935, ch. 687, title I, § 7, 49 Stat. 815.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Rules and regulations, authority of Commission to make, issue, amend, and rescind, see section 79t of this title.

Unlawful transactions by registered companies except in accordance with declaration effective under this section, see section 79f of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 79f of this title.

§ 79h. Acquiring interest in electric and gas companies serving same territory

Whenever a State law prohibits, or requires approval or authorization of, the ownership or operation by a single company of the utility assets of an electric utility company and a gas utility company serving substantially the same territory, it shall be unlawful for a registered holding company, or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise—

(1) to take any step, without the express approval of the State commission of such State, which results in its having a direct or indirect interest in an electric utility company and a gas utility company serving substantially the same territory; or

(2) if it already has any such interest, to acquire, without the express approval of the State commission, any direct or indirect interest in an electric utility company or gas utility company serving substantially the same territory as that served by such companies in which it already has an interest.

(Aug. 26, 1935, ch. 687, title I, § 8, 49 Stat. 817.)

CROSS REFERENCES

Approval of unlawful or detrimental acquisitions barred, see section 79j of this title.

§ 79i. Acquisition of securities and utility assets and other interests

(a) Acquisition prohibited prior to Commission approval

Unless the acquisition has been approved by the Commission under section 79j of this title, it shall be unlawful—

(1) for any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to acquire, directly or indirectly, any securities or utility assets or any other interest in any business;

(2) for any person, by use of the mails or any means or instrumentality of interstate commerce, to acquire, directly or indirectly, any security of any public-utility company, if such person is an affiliate under clause (A) of paragraph (11) of subsection (a) of section

79b of this title, of such company and of any other public utility or holding company, or will by virtue of such acquisition become such an affiliate.

(b) Acquisition of utility assets authorized by State Commission; holding company systems organized in same state

Subsection (a) of this section shall not apply to—

(1) the acquisition by a public-utility company of utility assets the acquisition of which has been expressly authorized by a State commission; or

(2) the acquisition by a public-utility company of securities of a subsidiary public-utility company thereof, provided that both such public-utility companies and all other public-utility companies in the same holding-company system are organized in the same State, that the business of each such company in such system is substantially confined to such State, and that the acquisition of such securities has been expressly authorized by the State commission of such State.

(c) Acquisition of securities guaranteed by United States, state, or political subdivision; other securities and commercial paper held appropriate by Commission

Subsection (a) of this section shall not apply to the acquisition by a registered holding company, or a subsidiary company thereof, of—

(1) securities of, or securities the principal or interest of which is guaranteed by, the United States, a State, or political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing;

(2) such other readily marketable securities within the limitation of such amounts, as the Commission may by rules and regulations prescribe as appropriate for investment of current funds and as not detrimental to the public interest or the interest of investors or consumers; or

(3) such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers.

(Aug. 26, 1935, ch. 687, title I, § 9, 49 Stat. 817.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Rules and regulations, authority of Commission to make, issue, amend, and rescind, see section 79t of this title.

§ 79j. Approval of acquisition of securities and utility assets and other interests

(a) Contents of application

A person may apply for approval of the acquisition of securities or utility assets, or of any other interest in any business, by filing an application in such form as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors and consumers. Such application shall include—

(1) in the case of the acquisition of securities, such information and copies of such documents as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers in respect of—

(A) the security to be acquired, the consideration to be paid therefor, and compliance with such State laws as may apply in respect of the issue, sale, or acquisition thereof,

(B) the outstanding securities of the company whose security is to be acquired, the terms, position, rights, and privileges of each class and the options in respect of any such securities,

(C) the names of all security holders of record (or otherwise known to the applicant) owning, holding, or controlling 1 per centum or more of any class of security of such company, the officers and directors of such company, and their remuneration, security holdings in, material contracts with, and borrowings from such company and the offices or directorships held, and securities owned, held, or controlled, by them in other companies,

(D) the bonus, profit-sharing and voting-trust agreements, underwriting arrangements, trust indentures, mortgages, and similar documents, by whatever name known, of or relating to such company,

(E) the material contracts, not made in the ordinary course of business, and the service, sales, and construction contracts of such company,

(F) the securities owned, held, or controlled, directly or indirectly, by such company,

(G) balance sheets and profit and loss statements of such company for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission by an independent public accountant,

(H) any further information regarding such company and any associate company or affiliate thereof or its relations with the applicant company, and

(I) if the applicant be not a registered holding company, any of the information and documents which may be required under section 79e of this title from a registered holding company;

(2) in the case of the acquisition of utility assets, such information concerning such assets, the value thereof and consideration to be paid therefor, the owner or owners thereof and their relation to, agreements with, and

interest in the securities of, the applicant or any associate company thereof as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers; and

(3) in the case of the acquisition of any other interest in any business, such information concerning such business and the interest to be acquired, and the consideration to be paid, as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

(b) Conditions affecting approval

If the requirements of subsection (f) of this section are satisfied, the Commission shall approve the acquisition unless the Commission finds that—

(1) such acquisition will tend towards interlocking relations or the concentration of control of public-utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors or consumers;

(2) in case of the acquisition of securities or utility assets, the consideration, including all fees, commissions, and other remuneration, to whomsoever paid, to be given, directly or indirectly, in connection with such acquisition is not reasonable or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets to be acquired or the utility assets underlying the securities to be acquired; or

(3) such acquisition will unduly complicate the capital structure of the holding-company system of the applicant or will be detrimental to the public interest or the interest of investors or consumers or the proper functioning of such holding-company system.

The Commission may condition its approval of the acquisition of securities of another company upon such a fair offer to purchase such of the other securities of the company whose security is to be acquired as the Commission may find necessary or appropriate in the public interest or for the protection of investors or consumers.

(c) Conditions barring approval

Notwithstanding the provisions of subsection (b) of this section, the Commission shall not approve—

(1) an acquisition of securities or utility assets, or of any other interest, which is unlawful under the provisions of section 79h of this title or is detrimental to the carrying out of the provisions of section 79k of this title; or

(2) the acquisition of securities or utility assets of a public-utility or holding company unless the Commission finds that such acquisition will serve the public interest by tending towards the economical and efficient development of an integrated public-utility system. This paragraph shall not apply to the acquisition of securities or utility assets of a public-utility company operating exclusively outside the United States.

(d) Approval to be granted in reasonable time

Within such reasonable time after the filing of an application under this section as the Commission shall fix by rules and regulations or order, the Commission shall enter an order either granting or, after notice and opportunity for hearing, denying approval of the acquisition unless the applicant shall withdraw its application. Amendments to an application may be made upon such terms and conditions as the Commission may prescribe.

(e) Terms and conditions of order granting approval

The Commission, in any order approving the acquisition of securities or utility assets, may prescribe such terms and conditions in respect of such acquisition, including the price to be paid for such securities or utility assets, as the Commission may find necessary or appropriate in the public interest or for the protection of investors or consumers.

(f) Compliance with State laws as condition of approval

The Commission shall not approve any acquisition as to which an application is made under this section unless it appears to the satisfaction of the Commission that such State laws as may apply in respect of such acquisition have been complied with, except where the Commission finds that compliance with such State laws would be detrimental to the carrying out of the provisions of section 79k of this title.

(Aug. 26, 1935, ch. 687, title I, § 10, 49 Stat. 818.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Unlawful acquisition of securities and utility assets, see section 79i of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18, 79i of this title.

§ 79k. Simplification of holding company systems

(a) Examination by Commission with view to simplification

It shall be the duty of the Commission to examine the corporate structure of every registered holding company and subsidiary company thereof, the relationships among the companies in the holding-company system of every such company and the character of the interests thereof and the properties owned or controlled thereby to determine the extent to which the corporate structure of such holding-company system and the companies therein may be simplified, unnecessary complexities therein eliminated, voting power fairly and equitably distributed among the holders of securities thereof, and the properties and business thereof confined to those necessary or appropriate to the operations of an integrated public-utility system.

(b) Limitations on operations of holding company systems

It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

(1) To require by order, after notice and opportunity for hearing, that each registered

holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: *Provided, however,* That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.

(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company which is not a holding company, or of any company whose principal business is that of a public-utility company.

The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in section 79x of this title.

(c) Time for compliance with order limiting operations

Any order under subsection (b) of this section shall be complied with within one year from the date of such order; but the Commission shall, upon a showing (made before or after the entry of such order) that the applicant has been or will be unable in the exercise of due diligence to comply with such order within such time, extend such time for an additional period not exceeding one year if it finds such extension necessary or appropriate in the public interest or for the protection of investors or consumers.

(d) Court enforcement of order for simplification; appointment of trustee; disposition of assets; reorganization plan

The Commission may apply to a court, in accordance with the provisions of subsection (f) of section 79r of this title, to enforce compliance with any order issued under subsection (b) of this section. In any such proceeding, the court as a court of equity may, to such extent as it deems necessary for purposes of enforcement of such order, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction, in any such proceeding, to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer under the direction of the court the assets so possessed. In any proceeding for the enforcement of an order of the Commission issued under subsection (b) of this section, the trustee with the approval of the court shall have power to dispose of any or all of such assets and, subject to such terms and conditions as the court may prescribe, may make such disposition in accordance with a fair and equitable reorganization plan which shall have been approved by the Commission after opportunity for hearing. Such reorganization plan may be proposed in the first instance by the Commission, or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization.

(e) Submission by company of plan for simplification; court enforcement of order of approval; appointment of trustee

In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b) of this section. If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) of this section and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 79r of this title, to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of this section, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed.

(f) Commission as trustee; submission of reorganization plan by Commission or interested party

In any proceeding in a court of the United States, whether under this section or otherwise, in which a receiver or trustee is appointed for any registered holding company, or any subsidiary company thereof, the court may constitute and appoint the Commission as sole trustee or receiver, subject to the directions and orders of the court, whether or not a trustee or receiver shall theretofore have been appointed, and in any such proceeding the court shall not appoint any person other than the Commission as trustee or receiver without notifying the Commission and giving it an opportunity to be heard before making any such appointment. In no proceeding under this section or otherwise shall the Commission be appointed as trustee or receiver without its express consent. In any such proceeding a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court. Notwithstanding any other provision of law, any such reorganization plan may be proposed in the first instance by the Commission or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization. The Commission may, by such rules and regulations or order as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers, require that any or all fees, expenses, and remuneration, to whomsoever paid, in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof, in any such proceeding, shall be subject to approval by the Commission.

(g) Solicitation of proxies, powers of attorney, etc., in respect of reorganization plan

It shall be unlawful for any person to solicit or permit the use of his or its name to solicit, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, any proxy, consent, authorization, power of attorney, deposit, or dissent in respect of any reorganization plan of a registered holding company or any subsidiary company thereof under this section, or otherwise, or in respect of any plan under this section for the divestment of control, securities, or other assets, or for the dissolution of any registered holding company or any subsidiary company thereof, unless—

(1) the plan has been proposed by the Commission, or the plan and such information regarding it and its sponsors as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers has been submitted to the Commission by a person having a bona fide interest (as defined by the rules and regulations of the Commission) in such reorganization;

(2) each such solicitation is accompanied or preceded by a copy of a report on the plan which shall be made by the Commission after an opportunity for a hearing on the plan and other plans submitted to it, or by an abstract of such report made or approved by the Commission; and

(3) each such solicitation is made not in contravention of such rules and regulations or orders as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers.

Nothing in this subsection or the rules and regulations thereunder shall prevent any person from appearing before the Commission or any court through an attorney or proxy.

(Aug. 26, 1935, ch. 687, title I, § 11, 49 Stat. 820.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Exchanges and distributions upon orders of Commission, see section 1081 et seq. of Title 26, Internal Revenue Code.

No approval for acquisition of securities and utility assets and other interests when detrimental to carrying out provisions of this section, see section 79j of this title.

Penalties for violations, exemption, see section 79z-3 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 79j, 79z-3 of this title; title 26 sections 1081, 1083, 4382.

§ 79l. Intercompany and other transactions relating to registered companies

(a) Borrowing from other companies in same system

It shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly, to borrow, or to receive any extension of credit or indemnity, from any public-utility company in the same holding-company system or from any subsidiary company of such holding company, but it shall not be unlawful under this subsection to renew, or extend the time of, any loan, credit, or indemnity outstanding on August 26, 1935.

(b) Loans to other companies in same system

It shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly, to lend or in any manner extend its credit to or indemnify any company in the same holding-company system in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this chapter or the rules, regulations, or orders thereunder.

(c) Payment of dividends or retirement of securities

It shall be unlawful for any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to declare or pay any dividend on any security of such company or to acquire, retire, or redeem any security of such company, in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate to protect the financial integrity of companies in holding-company systems, to safeguard the working capital of public-utility companies, to prevent the payment of dividends out of capital or unearned surplus, or to prevent the circumvention of the provisions of this chapter or the rules, regulations, or orders thereunder.

(d) Sale of securities of other companies

It shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to sell any security which it owns of any public-utility company, or any utility assets, in contravention of such rules and regulations or orders regarding the consideration to be received for such sale, maintenance of competitive conditions, fees and commissions, accounts, disclosure of interest, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this chapter or the rules, regulations, or orders thereunder.

(e) Solicitation of proxies, powers of attorney, etc., regarding securities

It shall be unlawful for any person to solicit or to permit the use of his or its name to solicit, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, any proxy, power of attorney, consent, or authorization regarding any security of a registered holding company or a subsidiary company thereof in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this chapter or the rules, regulations, or orders thereunder.

(f) Negotiations or transactions with other companies in contravention of rules and regulations of Commission

It shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under this chapter, with any company in the same holding-company system or with any affiliate of a company in such holding-company system in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this chapter or the rules and regulations thereunder.

(g) Negotiations or transactions by affiliate in contravention of rules and regulations of Commission

It shall be unlawful for any affiliate of any public-utility company, by use of the mails or any means or instrumentality of interstate commerce, or for any affiliate of any public-utility company engaged in interstate commerce, or of any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under this chapter, with any such company of which it is an affiliate, in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters as the Commission deems necessary or appropriate to prevent the circumvention of the provisions of this chapter.

(h) Political contributions forbidden

It shall be unlawful for any registered holding company, or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly—

(1) to make any contribution whatsoever in connection with the candidacy, nomination, election or appointment of any person for or to any office or position in the Government of the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing; or

(2) to make any contribution to or in support of any political party or any committee or agency thereof.

The term "contribution" as used in this subsection includes any gift, subscription, loan, advance, or deposit of money or anything of value, and includes any contract, agreement, or promise, whether or not legally enforceable, to make a contribution.

(i) Representation before Congress or Commissions; filing statement of employment, compensation, etc.

It shall be unlawful for any person employed or retained by any registered holding company, or any subsidiary company thereof, to present, advocate, or oppose any matter affecting any registered holding company or any subsidiary company thereof, before the Congress or any Member or committee thereof, or before the Commission or Federal Power Commission, or any member, officer, or employee of either such Commission, unless such person shall file with the Commission in such form and detail and at such time as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers, a statement of the subject matter in respect of which such person is retained or employed, the nature and character of such retainer or employment, and the amount of compensation received or to be received by such person, directly or indirectly, in connection therewith. It shall be the duty of every such person so employed or retained to file with the Commission within ten days after the close of each calendar month during such retainer or employment, in such form and detail as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers, a statement of the expenses incurred and the compensation received by such person during such month in connection with such retainer or employment.

(Aug. 26, 1935, ch. 687, title I, § 12, 49 Stat. 823.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

POLITICAL CONTRIBUTIONS

Definition of term "contribution or expenditure" for purposes of subsec. (h) of this section as including any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in section 441b of Title 2, The Congress, but not including (A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject; (B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and (C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock, see section 441b(b)(2) of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 441b.

§ 79m. Service, sales, and construction contracts

(a) Contracts by holding companies

After April 1, 1936, it shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract by which such company undertakes to perform services or construction work for, or sell goods to, any associate company thereof which is a public-utility or mutual service company. This provision shall not apply to such transactions, involving special or unusual circumstances or not in the ordinary course of business, as the Commission by rules and regulations or order may conditionally or unconditionally exempt as being necessary or appropriate in the public interest or for the protection of investors or consumers.

(b) Contracts by subsidiary or mutual service companies

After April 1, 1936, it shall be unlawful for any subsidiary company of any registered holding company or for any mutual service company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract by which such company undertakes to perform services or construction work for, or sell goods to, any associate company thereof except in accordance with such terms and conditions and subject to such limitations and prohibitions as the Commission by rules and regulations or order shall prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers and to insure that such contracts are performed economically and efficiently for the benefit of such associate companies at cost, fairly and equitably allocated among such companies. This provision shall not apply to such transactions as the Commission by rules and regulations or order may conditionally or unconditionally exempt as being necessary or appropriate in the public interest or for the protection of investors or consumers, if such transactions (1) are with any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public-utility company operating within the United States, or (2) involve special or unusual circumstances or are not in the ordinary course of business.

(c) Determination and allocation of costs; duration of contracts; regulation by rules of Commission

The rules and regulations and orders of the Commission under this section may prescribe, among other things, such terms and conditions regarding the determination of costs and the allocation thereof among specified classes of companies and for specified classes of service, sales, and construction contracts, the duration of such contracts, the making and keeping of accounts and cost-accounting procedures, the filing of annual and other periodic and special reports, the maintenance of competitive conditions, the disclosure of interests, and similar matters, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

(d) Application for approval as mutual service company and nature of business; regulation by rules of Commission

The rules and regulations and orders of the Commission under this section shall prescribe, among other things, such terms and conditions regarding the manner in which application may be made for approval as a mutual service company and the granting and continuance of such approval, the nature and enforcement of agreements for the sharing of expenses and distributing of revenues among member companies, and matters relating to such agreements, the nature and types of businesses and transactions in which mutual service companies may engage, and the manner of engaging therein, and the relations and transactions with member companies and affiliates, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers. The Commission shall not approve, or continue the approval of, any company as a mutual service company unless the Commission finds such company is so organized as to ownership, costs, revenues, and the sharing thereof as reasonably to insure the efficient and economical performance of service, sales, or construction contracts by such company for member companies, at cost fairly and equitably allocated among such member companies, at a reasonable saving to member companies over the cost to such companies of comparable contracts performed by independent persons. The Commission, upon its own motion or at the request of a member company or a State commission, may, after notice and opportunity for hearing, by order require a reallocation or reapportionment of costs among member companies of a mutual service company if it finds the existing allocation inequitable and may require the elimination of a service or services to a member company which does not bear its fair proportion of costs or which, by reason of its size or other circumstances, does not require such service or services. The Commission, after notice and opportunity for hearing, by order shall revoke, suspend, or modify the approval given any mutual service company if it finds that such company has persistently violated any provision of this section or any rule, regulation, or order thereunder.

(e) Contracts by affiliate in contravention of rules and regulations of Commission

It shall be unlawful for any affiliate of any public-utility company engaged in interstate commerce, or of any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract, by which such affiliate undertakes to perform services or construction work for, or sell goods to, any such company of which it is an affiliate, in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters, as the Commission deems necessary or appropriate to prevent the circumvention of the provisions of this chapter or the rules, regulations, or orders thereunder.

(f) Contracts by persons engaged in performance of service, sales and construction in contravention of rules of Commission

It shall be unlawful for any person whose principal business is the performance of service, sales, or construction contracts for public-utility or holding companies, by use of the mails or any means or instrumentality of interstate commerce, to enter into or take any step in the performance of any service, sales, or construction contract with any public-utility company, or for any such person, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract with any public-utility company engaged in interstate commerce, or with any registered holding company or any subsidiary company of a registered holding company, in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this chapter or the rules, regulations, or orders thereunder.

(g) Investigations and recommendations by Commission

The Commission, in order to obtain information to serve as a basis for recommending further legislation, shall from time to time conduct investigations regarding the making, performance, and costs of service, sales, and construction contracts with holding companies and subsidiary companies thereof and with public-utility companies, the economies resulting therefrom, and the desirability thereof. The Commission shall report to Congress, from time to time, the results of such investigations, together with such recommendations for legislation as it deems advisable. On the basis of such investigations the Commission shall classify the different types of such contracts and the work done thereunder, and shall make recommendations from time to time regarding the standards and scope of such contracts in relation to public-utility companies of different kinds and sizes and the costs incurred thereunder and economies resulting therefrom. Such recommendations shall be made available to State commissions, public-utility companies, and to the public in such form and at such reasonable charge as the Commission may prescribe.

(Aug. 26, 1935, ch. 687, title I, § 13, 49 Stat. 825.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10

of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Mutual service company, definition of, see section 79b of this title.

Periodic and other reports, see section 79n of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 79b, 79n of this title.

§ 79n. Periodic and other reports

Every registered holding company and every mutual service company shall file with the Commission such annual, quarterly, and other periodic and special reports, the answers to such specific questions and the minutes of such directors', stockholders', and other meetings, as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. Such reports, if required by the rules and regulations of the Commission, shall be certified by an independent public accountant, and shall be made and filed at such time and in such form and detail as the Commission shall prescribe. The Commission may require that there be included in reports filed with it such information and documents as it finds necessary or appropriate to keep reasonably current the information filed under section 79e or 79m of this title, and such further information concerning the financial condition, security structure, security holdings, assets, and cost thereof, wherever determinable, and affiliations of the reporting company and the associate companies, member companies, and affiliates thereof as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

(Aug. 26, 1935, ch. 687, title I, § 14, 49 Stat. 827.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 79o. Accounts and records

(a) Duty of holding companies to keep

Every registered holding company and every subsidiary company thereof shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this chapter or the rules, regulations, or orders thereunder.

(b) Duty of affiliates to keep

Every affiliate of a registered holding company or of any subsidiary company thereof, or of any public-utility company engaged in interstate commerce or not so engaged, shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records relating to any transaction of such affiliate which is subject to any provision of this chapter or any rule, regulation, or order thereunder, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this chapter or the rules, regulations, or orders thereunder.

(c) Duty of mutual service companies to keep

Every mutual service company, and every affiliate of a mutual service company as to any transaction of such affiliate which is subject to any provision of this chapter or any rule, regulation, or order thereunder, shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this chapter or the rules, regulations, or orders thereunder.

(d) Duty of persons engaged in service, sales, or construction to keep

Every person whose principal business is the performance of service, sales, or construction contracts for public-utility or holding companies shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records, relating to any transaction by such person which is subject to any provision of this chapter or any rule, regulation, or order thereunder, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this chapter or the rules and regulations thereunder.

(e) Use of forms other than prescribed by Commission unlawful

After the Commission has prescribed the form and manner of making and keeping accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records to be kept by any person hereunder, it shall be unlawful for any such person to keep any accounts, cost-accounting procedures, correspondence, memoranda, papers, books, or other records other than those prescribed or such as may be approved by the Commission, or to keep his or its accounts, cost-accounting procedures, correspondence, memoranda, papers, books, or other records in any manner other than that prescribed or approved by the Commission.

(f) Examinations by Commission

All accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records kept or required to be kept by persons subject to any provision of this section shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. The Commission, after notice and opportunity for hearing, may prescribe the account or accounts in which particular outlays, receipts, and other transactions shall be entered, charged, or credited and the manner in which such entry, charge, or credit shall be made, and may require an entry to be modified or supplemented so as properly to show the cost of any asset or any other cost.

(g) Submission by holding company or subsidiary to examination by holders of securities

It shall be the duty of every registered holding company and of every subsidiary company thereof and of every affiliate of a company insofar as such affiliate is subject to any provision of this chapter or any rule, regulation, or order thereunder, to submit the accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records of such holding company, subsidiary company, or affiliate, as the case may be, to such examinations, in person or by duly appointed attorney, by the holder of any security of such holding company, subsidiary company, or affiliate, as the case may be, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

(h) Submission by mutual service companies and persons engaged in rendering service to examination by other companies

It shall be the duty of every mutual service company, and of every affiliate of a mutual service company, and of every person whose principal business is the performance of service, sales, or construction contracts for public-utility or holding companies, insofar as such affiliate or such person is subject to any provision of this chapter or any rule, regulation, or order thereunder, to submit the accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records of such mutual service company, affiliate, or person to such examinations, in person or by duly appointed attorney, by member companies of such mutual service company and by public-utility or holding companies for which such person performs service, sales, or construction contracts as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

(i) Uniform methods for keeping accounts; power of Commission to prescribe

The Commission, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors or consumers may prescribe for persons subject to the provisions of subsections (a), (b), (c), or (d) of this section uniform methods for keeping accounts required under any provision of this section, including, among other things, the manner in which the cost of all assets, whenever determinable, shall be shown, the methods of classifying and segregating accounts, and the manner in which cost-accounting procedures shall be maintained.

(Aug. 26, 1935, ch. 687, title I, § 15, 49 Stat. 828.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 79p. Misleading statements, penalty; rights and remedies additional to those existing under other laws

(a) Any person who shall make or cause to be made any statement in any application, report, registration statement, or document filed pursuant to any provision of this chapter, or any rule, regulation, or order thereunder, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact shall be liable in the same manner, to the same extent, and subject to the same limitations as provided in section 18 of the Securities Exchange Act of 1934 [15 U.S.C. 78r] with respect to an application, report, or document filed pursuant to the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.].

(b) The rights and remedies provided by this chapter, except as provided in section 79q(b) of this title, shall be in addition to any and all other rights and remedies that may exist under the Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or otherwise at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this chapter shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of.

(Aug. 26, 1935, ch. 687, title I, § 16, 49 Stat. 829.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsecs. (a) and (b), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

The Securities Act of 1933, referred to in subsec. (b), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

CROSS REFERENCES

Trust Indenture Act of 1939—
  Jurisdiction under this section as affected by, see section 77zzz of this title.
  Rights and remedies under, see section 77www of this title.

§ 79q. Officers and directors

(a) Statement of ownership of securities; duty to file

Every person who is an officer or director of a registered holding company shall file with the Commission in such form as the Commission shall prescribe (1) at the time of the registration of such holding company, or within ten days after such person becomes an officer or director, a statement of the securities of such registered holding company or any subsidiary company thereof of which he is, directly or indirectly, the beneficial owner, and (2) within ten days after the close of each calendar month thereafter, if there has been any change in such ownership during such month, a statement of such ownership as of the close of such calendar month and of the changes in such ownership that have occurred during such calendar month.

(b) Limitation on profits in purchase and sale of securities

For the purpose of preventing the unfair use of information which may have been obtained by any such officer or director by reason of his relationship to such registered holding company or any subsidiary company thereof, any profit realized by any such officer or director from any purchase and sale, or any sale and purchase, of any security of such registered holding company or any subsidiary company thereof within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the holding company or subsidiary company in respect of the security of which such profit was realized, irrespective of any intention on the part of such officer or director in entering into such transaction to hold the security purchased or not to repurchase the security sold for a period of more than six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company entitled thereto or by the owner of any security of such company in the name and in the behalf of such company if such company shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not cover any transaction where such person was not an officer or director at the times of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Commission by rules and regulations may, as necessary or appropriate in the public interest or for the protection of investors or consumers, exempt as not comprehended within the purpose of this subsection. Nothing in this subsection shall be construed to give a remedy in the case of any transaction in respect of which a remedy is given under subsection (b) of section 78p of this title.

(c) Officers or representatives of banking institutions disqualified to serve as officers or directors

After one year from August 26, 1935, no registered holding company or any subsidiary company thereof shall have, as an officer or director thereof, any executive officer, director, partner, appointee, or representative of any bank, trust company, investment banker, or banking association or firm, or any executive officer, director, partner, appointee, or representative of any corporation a majority of whose stock, having the unrestricted right to vote for the election of directors, is owned by any bank, trust company, investment banker, or banking association or firm, except in such cases as rules and regulations prescribed by the Commission may permit as not adversely affecting the public interest or the interest of investors or consumers.

(Aug. 26, 1935, ch. 687, title I, § 17, 49 Stat. 830.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

FEDERAL RULES OF CIVIL PROCEDURE

One form of action, see rule 2, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 79p of this title.

§ 79r. Investigations, injunctions, and enforcement of law

(a) Investigations to determine violations, aid in enforcement and as basis for recommendations

The Commission, in its discretion, may investigate any facts, conditions, practices, or matters which it may deem necessary or appropriate to determine whether any person has violated or is about to violate any provision of this chapter or any rule or regulation thereunder, or to aid in the enforcement of the provisions of this chapter, in the prescribing of rules and regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation concerning the matters to which this chapter relates. The Commission may require or permit any person to file with it a statement in writing, under oath or otherwise as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish, or make available to State commissions, information concerning any such subject.

(b) Investigation of business, financial condition, etc., of companies

The Commission upon its own motion or at the request of a State commission may investigate, or obtain any information regarding the business, financial condition, or practices of any registered holding company or subsidiary company thereof or facts, conditions, practices, or matters affecting the relations between any such company and any other company or companies in the same holding-company system.

(c) Administering oaths; subpenas; examining witnesses

For the purpose of any investigation or any other proceeding under this chapter, any member of the Commission, or any officer thereof designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

(d) Court aid to compel giving testimony; penalty for refusal to testify

In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who, without just cause, shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(e) Repealed. Pub. L. 91–452, title II, § 214, Oct. 15, 1970, 84 Stat. 929

(f) Injunctions to restrain violations; prosecutions

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this chapter, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper district court of the United States, or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this chapter or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this chapter.

(g) Mandamus to compel compliance with law

Upon application of the Commission, the district courts of the United States, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder.

(Aug. 26, 1935, ch. 687, title I, § 18, 49 Stat. 831; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 15, 1970, Pub. L. 91-452, title II, § 214, 84 Stat. 929.)

CODIFICATION

As originally enacted subsecs. (f) and (g) contained references to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted "the district court of the United States for the District of Columbia" for "the Supreme Court of the District of Columbia", and act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia". However, the words "United States District Court for the District of Columbia" have now been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of Title 28 which states that "the District of Columbia constitutes one judicial district".

AMENDMENTS

1970—Subsec. (e). Pub. L. 91-452 struck out subsec. (e) which related to the immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Action to enjoin violations and institution of criminal proceedings under—
- Investment Advisers Act of 1940, see section 80b-9 of this title.
- Investment Company Act of 1940, see section 80a-41 of this title.
- Securities Act of 1933, see section 77t of this title.
- Securities Exchange Act of 1934, see section 78u of this title.
- Trust Indenture Act of 1939, see section 77uuu of this title.

Administration of oaths, etc., under—
- Investment Advisers Act of 1940, see section 80b-9 of this title.
- Investment Company Act of 1940, see section 80a-41 of this title.
- Securities Act of 1933, see section 77s of this title.
- Securities Exchange Act of 1934, see section 78u of this title.
- Trust Indenture Act of 1939, see section 77uuu of this title.

Attendance of witnesses and production of documents, judicial enforcement of orders under—
- Investment Advisers Act of 1940, see section 80b-9 of this title.
- Investment Company Act of 1940, see section 80a-41 of this title.
- Securities Act of 1933, see section 77v of this title.
- Securities Exchange Act of 1934, see section 78u of this title.
- Trust Indenture Act of 1939, see section 77uuu of this title.

Contempt proceedings, see sections 401, 402, 3285, 3691, and 3771 of Title 18, Crimes and Criminal Procedure.

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Investigation of facts by Commission under—
  Investment Advisers Act of 1940, see section 80b-9 of this title.
  Investment Company Act of 1940, see section 80a-41 of this title.
  Securities Act of 1933, see section 77t of this title.
  Securities Exchange Act of 1934, see section 78u of this title.
  Trust Indenture Act of 1939, see section 77uuu of this title.
Issuance of mandamus under—
  Securities Act of 1933, see section 77t of this title.
  Securities Exchange Act of 1934, see section 78u of this title.
Limitations on operations of holding company systems, enforcement of orders, see section 79k of this title.
Misleading statements, liability for, see section 79p of this title.

FEDERAL RULES OF APPELLATE PROCEDURE

Injunction pending appeal, see rule 8, Title 28, Appendix, Judiciary and Judicial Procedure.
Review and enforcement of orders of administrative agencies, boards, commissions, and officers, see rule 15 et seq.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.
Mandamus as abolished but relief yet available by appropriate action or motion under rules, see rule 81.
Subpoena, see rule 45.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal contempt, see rule 42, Title 18, Appendix, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 79k of this title.

§ 79s. Hearings before Commission

Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before the Commission, the Commission, in accordance with such rules and regulations as it may prescribe, shall admit as a party any interested State, State commission, State securities commission, municipality, or other political subdivision of a State, and may admit as a party any representative of interested consumers or security holders, or any other person whose participation in the proceedings may be in the public interest or for the protection of investors or consumers.

(Aug. 26, 1935, ch. 687, title I, § 19, 49 Stat. 832.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Hearings by Commission under—
  Investment Advisers Act of 1940, see section 80b-12 of this title.
  Investment Company Act of 1940, see section 80a-40 of this title.
  Securities Act of 1933, see section 77u of this title.
  Securities Exchange Act of 1934, see section 78v of this title.
  Trust Indenture Act of 1939, see section 77ttt of this title.

§ 79t. Rules, regulations, and orders

(a) Authority of Commission to make

The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as it may deem necessary or appropriate to carry out the provisions of this chapter, including rules and regulations defining accounting, technical, and trade terms used in this chapter. Among other things, the Commission shall have authority, for the purposes of this chapter, to prescribe the form or forms in which information required in any statement, declaration, application, report, or other document filed with the Commission shall be set forth, the items or details to be shown in balance sheets, profit and loss statements, and surplus accounts, the manner in which the cost of all assets, whenever determinable, shall be shown in regard to such statements, declarations, applications, reports, and other documents filed with the Commission, or accounts required to be kept by the rules, regulations, or orders of the Commission, and the methods to be followed in the keeping of accounts and cost-accounting procedures and the preparation of reports, in the segregation and allocation of costs, in the determination of liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the keeping or preparation, where the Commission deems it necessary or appropriate, of separate or consolidated balance sheets or profit and loss statements for any companies in the same holding-company system.

(b) Consistency with laws of United States or States

In the case of the accounts of any company whose methods of accounting are prescribed under the provisions of any law of the United States or of any State, the rules and regulations or orders of the Commission in respect of accounts shall not be inconsistent with the requirements imposed by such law or any rule or regulation thereunder; nor shall anything in this chapter relieve any public-utility company from the duty to keep the accounts, books, records, or memoranda which may be required to be kept by the law of any State in which it operates or by the State Commission of any such State. But this provision shall not prevent the Commission from imposing such additional requirements regarding reports or accounts as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers.

(c) Effective date; classification of persons and matters; hearings

The rules and regulations of the Commission shall be effective upon publication in the manner which the Commission shall prescribe. For the purpose of its rules, regulations, or orders the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. Orders of the Commission under this chapter shall be issued only after opportunity for hearing.

(d) Filing information or documents by reference

The Commission, by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of investors or consumers, may authorize the filing of any information or documents required to be filed with the Commission under this chapter, or under the Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], or under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by incorporating by reference any information or documents theretofore or concurrently filed with the Commission under this chapter or either of such Acts. No provision of this chapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(Aug. 26, 1935, ch. 687, title I, § 20, 49 Stat. 833.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (d), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

The Securities Exchange Act of 1934, referred to in subsec. (d), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 FR 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Rules and regulations—
- Acquisition of securities and utility assets and other interests, see section 79i of this title.
- Approval of acquisition of securities and utility assets and other interests, see section 79j of this title.
- Declarations by registered companies in respect to security transactions, see section 79g of this title.
- Exemptions regarding holding companies, subsidiary companies, and affiliates, power of Commission to make, see section 79c of this title.
- Integration of procedure with other acts, see section 77hhh of this title.
- Investment Advisers Act of 1940, see section 80b-11 of this title.
- Investment Company Act of 1940, see section 80a-37 of this title.
- Registration of holding companies and registration statements, see section 79e of this title.
- Securities Act of 1933, see section 77s of this title.
- Securities Exchange Act of 1934, see sections 78c and 78w of this title.
- Trust Indenture Act of 1939, see section 77sss of this title.
- Unlawful transactions by registered companies, see section 79f of this title.

§ 79u. Effect on other laws

Nothing in this chapter shall affect (1) the jurisdiction of the Commission under the Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] over any person, security, or contract, or (2) the rights, obligations, duties, or liabilities of any person under such Acts; nor shall anything in this chapter affect the jurisdiction of any other commission, board, agency, or officer of the United States or of any State or political subdivision of any State, over any person, security, or contract, insofar as such jurisdiction does not conflict with any provision of this chapter or any rule, regulation, or order thereunder.

(Aug. 26, 1935, ch. 687, title I, § 21, 49 Stat. 834.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in text, is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

The Securities Exchange Act of 1934, referred to in text, is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 79v. Information filed with Commission

(a) Public disclosure of information; protection of trade secrets

When in the judgment of the Commission the disclosure of such information would be in the public interest or the interest of investors or consumers, the information contained in any statement, application, declaration, report, or other document filed with the Commission shall be available to the public, and copies thereof may be furnished to any person at such reasonable charge and under such reasonable limitations as the Commission may prescribe: *Provided, however,* That nothing in this chapter shall be construed to require, or to authorize the Commission to require, the revealing of trade secrets or processes in any application, declaration, report, or document filed with the Commission under this chapter.

(b) Written objection to public disclosure

Any person filing such application, declaration, report, or document may make written objection to the public disclosure of information contained therein, stating the grounds for such objection, and the Commission is authorized to hear objections in any such case where it finds it advisable.

(c) Disclosure of nonpublic information to other than Commission personnel

It shall be unlawful for any member, officer, or employee of the Commission to disclose to any person other than a member, officer, or employee of the Commission, or to use for personal benefit, any information contained in any application, declaration, report, or document filed with the Commission which is not made available to the public pursuant to this section.

(Aug. 26, 1935, ch. 687, title I, § 22, 49 Stat. 834.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 79w. Annual reports of Commission

The Commission shall submit annually a report to the Congress covering the work of the Commission for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this chapter as it may find advisable.

(Aug. 26, 1935, ch. 687, title I, § 23, 49 Stat. 834.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 79x. Court review of orders

(a) Any person or party aggrieved by an order issued by the Commission under this chapter may obtain a review of such order in the United States court of appeals within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 1254 of title 28.

(b) The commencement of proceedings under subsection (a) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(Aug. 26, 1935, ch. 687, title I, § 24, 49 Stat. 834; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Aug. 28, 1958, Pub. L. 85-791, § 15, 72 Stat. 946.)

CODIFICATION

In subsec. (a), "section 1254 of title 28" was substituted for "sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347)" on authority of Act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-791, in second sentence, substituted "transmitted by the clerk of the court to any member of the Commission, or" for "served upon any member of the Commission, or upon", substituted "file in the court" for "certify and file in the court a transcript of", and inserted "as provided in section 2112 of title 28", and in third sentence substituted "petition" for "transcript" and "jurisdiction, which upon the filing of the record shall be exclusive" for "exclusive jurisdiction".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Review of orders under—
- Investment Advisers Act of 1940, see section 80b-13 of this title.
- Investment Company Act of 1940, see section 80a-42 of this title.
- Securities Act of 1933, see section 77i of this title.
- Securities Exchange Act of 1934, see section 78y of this title.
- Trust Indenture Act of 1939, see section 77vvv of this title.

Simplification of holding company systems, review of commission's orders, see section 79k of this title.

FEDERAL RULES OF APPELLATE PROCEDURE

Review and enforcement of orders of administrative agencies, boards, commissions and officers, see rule 15 et seq., Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 79k of this title.

§ 79y. Jurisdiction of offenses and suits

The District Courts of the United States, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this chapter or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this chapter or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, and 1292 of title 28, and section 7 of the Act entitled "An Act to establish a court of appeals for the District of Columbia", approved February 9, 1893. No costs shall be assessed for or against the Commission in any proceeding under this chapter brought by or against the Commission in any court.

(Aug. 26, 1935, ch. 687, title I, § 25, 49 Stat. 835; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

REFERENCES IN TEXT

Act Feb. 9, 1893, ch. 74, § 7, 27 Stat. 435, 436, referred to in text, was repealed by act May 24, 1949, ch. 139, § 142, 63 Stat. 110. See sections 1291 and 1292 of Title 28.

CODIFICATION

As originally enacted section contained references to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted "the district court of the United States for the District of Columbia" for "the Supreme Court of the District of Columbia", and act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia". However, the words "United States District Court for the District of Columbia" have now been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of title 28 which states that "the District of Columbia constitutes one judicial district".

Reference to "sections 1254, 1291, and 1292 of title 28" was substituted for "sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347)" on authority of Act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Jurisdiction of offenses and suits under—
  Investment Advisers Act of 1940, see section 80b-14 of this title.
  Investment Company Act of 1940, see section 80a-43 of this title.
  Securities Act of 1933, see section 77v of this title.
  Securities Exchange Act of 1934, see section 78aa of this title.
  Trust Indenture Act of 1939, see section 77vvv of this title.
  Venue generally, see section 1391 et seq. of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF APPELLATE PROCEDURE

Review and enforcement of orders of administrative agencies, boards, commissions, and officers, see rule 15 et seq., Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under rule 54, see note set out under rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

Costs, see rule 54.

One form of action, see rule 2.

Process, see rule 4.

FEDERAL RULES OF CRIMINAL PROCEDURE

Continuation of section under rule 18, see note by Advisory Committee under rule 18, Title 18, Appendix, Crimes and Criminal Procedure.

Venue, see rules 18 to 22.

§ 79z. Validity of contracts

(a) Waiver provisions

Any condition, stipulation, or provision binding any person to waive compliance with any provision of this chapter or with any rule, regulation, or order thereunder shall be void.

(b) Contract provisions in violation of chapter; actual knowledge of violations

Every contract made in violation of any provision of this chapter or of any rule, regulation, or order thereunder, and every contract heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this chapter, or any rule, regulation, or order thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, regulation, or order, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule, regulation, or order.

(c) Validity of loans, extensions of credit and creation of liens; actual knowledge of violations

Nothing in this chapter shall be construed (1) to affect the validity of any loan or extension of credit (or any extension or renewal thereof) made or of any lien created prior or subsequent to the enactment of this chapter, unless at the time of the making of such loan or extension of credit (or extension or renewal thereof) or the creating of such lien, the person making such loan or extension of credit (or extension or renewal thereof) or acquiring such lien shall have actual knowledge of facts by reason of which the making of such loan or extension of credit (or extension or renewal thereof) or the acquisition of such lien is a violation of the provisions of this chapter or any rule or regulation thereunder, or (2) to afford a defense to the collection of any debt or obligation or the enforcement of any lien by any person who shall have acquired such debt, obligation, or lien in good faith for value and without actual knowledge of the violation of any provision of this chapter or any rule or regulation thereunder affecting the legality of such debt, obligation, or lien.

(Aug. 26, 1935, ch. 687, title I, § 26, 49 Stat. 835.)

§ 79z-1. Liability of controlling person; preventing compliance with law

(a) It shall be unlawful for any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do under the provisions of this chapter or any rule, regulation, or order thereunder.

(b) It shall be unlawful for any person without just cause to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, record, or account required to be made, filed, or kept under any provision of this chapter or any rule, regulation, or order thereunder.

(Aug. 26, 1935, ch. 687, title I, § 27, 49 Stat. 836.)

CROSS REFERENCES

Liability of controlling persons under—
- Investment Company Act of 1940, see section 80a-47 of this title.
- Securities Act of 1933, see section 77o of this title.
- Securities Exchange Act of 1934, see section 78t of this title.

§ 79z-2. Representation of guaranty or recommendation by United States

It shall be unlawful for any person in issuing, selling, or offering for sale any security of a registered holding company or subsidiary company thereof, to represent or imply in any manner whatsoever that such security has been guaranteed, sponsored, or recommended for investment by the United States or any agency or officer thereof.

(Aug. 26, 1935, ch. 687, title I, § 28, 49 Stat. 836.)

§ 79z-3. Penalties

Any person who willfully violates any provision of this chapter or any rule, regulation, or order thereunder (other than an order of the Commission under subsections (b), (d), (e), or (f) of section 79k of this title), or any person who willfully makes any statement or entry in any application, report, document, account, or record filed or kept or required to be filed or kept under the provisions of this chapter or any rule, regulation, or order thereunder, knowing such statement or entry to be false or misleading in any material respect, or any person who willfully destroys (except after such time as may be prescribed under any rules or regulations under this chapter), mutilates, alters, or by any means or device falsifies any account, correspondence, memorandum, book, paper, or other record kept or required to be kept under the provisions of this chapter or any rule, regulation, or order thereunder, shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both, except that in the case of a violation of a provision of subsection (a) or (b) of section 79d of this title by a holding company which is not an individual, the fine imposed upon such holding company shall be a fine not exceeding $200,000; but no person shall be convicted under this section for the violation of any rule, regulation, or order if he proves that he had no knowledge of such rule, regulation, or order.

(Aug. 26, 1935, ch. 687, title I, § 29, 49 Stat. 836; June 4, 1975, Pub. L. 94-29, § 27(c), 89 Stat. 163.)

AMENDMENTS

1975—Pub. L. 94-29 substituted "or imprisoned not more than five years" for "or imprisoned not more than two years".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Fraud and false statements, see chapter 47 (§ 1001 et seq.) of Title 18, Crimes and Criminal Procedure.

§ 79z-4. Study of public-utility and investment companies; report and recommendation

The Commission is hereby authorized and directed to make studies and investigations of public-utility companies, the territories served or which can be served by public-utility companies, and the manner in which the same are or can be served, to determine the sizes, types, and locations of public-utility companies which do or can operate most economically and efficiently in the public interest, in the interest of investors and consumers, and in furtherance of a wider and more economical use of gas and electric energy; upon the basis of such investigations and studies the Commission shall make public from time to time its recommendations as to the type and size of geographically and economically integrated public-utility systems which, having regard for the nature and character of the locality served, can best promote and harmonize the interests of the public, the investor, and the consumer. The Commission is authorized and directed to make a study of the functions and activities of investment trusts and investment companies, the corporate structures, and investment policies of such trusts and companies, the influence exerted by such trusts and companies upon companies in which they are interested, and the influence exerted by interests affiliated with the management of such trusts and companies upon their investment policies, and to report the results of its study and its recommendations to the Congress on or before January 4, 1937.

(Aug. 26, 1935, ch. 687, title I, § 30, 49 Stat. 837.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10

of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Findings and declaration of policy under Investment Company Act of 1940, see section 80a-1 of this title.

Findings under Investment Advisers Act of 1940, see section 80b-1 of this title.

Section Referred to in Other Sections

This section is referred to in sections 80a-1, 80b-1 of this title.

§ 79z-5. Employees of Commission; appointment and compensation

For the purposes of this chapter, the Commission may select, employ, and fix the compensation of such attorneys, examiners, and other experts as shall be necessary for the transaction of the business of the Commission in respect of this chapter; and the Commission may, subject to the civil-service laws, appoint such other officers and employees as are necessary in the execution of the functions of the Commission and fix their salaries in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(Aug. 26, 1935, ch. 687, title I, § 31, 49 Stat. 837; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972.)

References in Text

The civil-service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

Codification

Provisions that authorized the Commission to select, employ, and fix the compensation of attorneys, examiners, and other experts as shall be necessary for the transaction of the business of the Commission in respect of this chapter "without regard to the provisions of other laws applicable to the employment of officers and employees of the United States" were omitted as obsolete and superseded.

Such selection and employment are now subject to the civil service laws unless specifically excepted by those laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5, Government Organization and Employees.

As to the compensation of such personnel, sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed Pub. L. 89-554, Sept. 6, 1966, § 8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5. Section 5102 of Title 5 now contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Civil Service Commission to determine the applicability to specific positions and employees.

"Chapter 51 and subchapter III of chapter 53 of title 5" were substituted for "the Classification Act of 1949, as amended" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

Repeals

Act Oct. 28, 1949, ch. 782, § 1106(a), 63 Stat. 972, set out in the credit of this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

Amendments

1949—Act Oct. 28, 1949, struck out "Classification Act of 1923" and inserted in lieu thereof "Classification Act of 1949".

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 79z-6. Separability clause

If any provision of this chapter or the application of such provision to any person or circumstances shall be held invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

(Aug. 26, 1935, ch. 687, title I, § 32, 49 Stat. 837.)

CHAPTER 2D—INVESTMENT COMPANIES AND ADVISERS

SUBCHAPTER I—INVESTMENT COMPANIES

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SUBCHAPTER I—INVESTMENT COMPANIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 77c, 78c, 78m, 78n, 78o, 78s, 78u, 80b-2, 80b-3, 80b-5, 687, 687b of this title; title 12 section 1843; title 26 sections 265, 851, 852, 856, 1246, 4975; title 29 sections 432, 1001, 1002, 1101; title 43 section 1625.

§ 80a-1. Findings and declaration of policy

(a) Upon the basis of facts disclosed by the record and reports of the Securities and Exchange Commission made pursuant to section 79z-4 of this title, and facts otherwise disclosed and ascertained, it is found that investment companies are affected with a national public interest in that, among other things—

(1) the securities issued by such companies, which constitute a substantial part of all securities publicly offered, are distributed, purchased, paid for, exchanged, transferred, redeemed, and repurchased by use of the mails and means and instrumentalities of interstate commerce, and in the case of the numerous companies which issue redeemable securities this process of distribution and redemption is continuous;

(2) the principal activities of such companies—investing, reinvesting, and trading in securities—are conducted by use of the mails and means and instrumentalities of interstate commerce, including the facilities of national securities exchanges, and constitute a substantial part of all transactions effected in the securities markets of the Nation;

(3) such companies customarily invest and trade in securities issued by, and may dominate and control or otherwise affect the poli-

cies and management of, companies engaged in business in interstate commerce;

(4) such companies are media for the investment in the national economy of a substantial part of the national savings and may have a vital effect upon the flow of such savings into the capital markets; and

(5) the activities of such companies, extending over many States, their use of the instrumentalities of interstate commerce and the wide geographic distribution of their security holders, make difficult, if not impossible, effective State regulation of such companies in the interest of investors.

(b) Upon the basis of facts disclosed by the record and reports of the Securities and Exchange Commission made pursuant to section 79z-4 of this title, and facts otherwise disclosed and ascertained, it is declared that the national public interest and the interest of investors are adversely affected—

(1) when investors purchase, pay for, exchange, receive dividends upon, vote, refrain from voting, sell, or surrender securities issued by investment companies without adequate, accurate, and explicit information, fairly presented, concerning the character of such securities and the circumstances, policies, and financial responsibility of such companies and their management;

(2) when investment companies are organized, operated, managed, or their portfolio securities are selected, in the interest of directors, officers, investment advisers, depositors, or other affiliated persons thereof, in the interest of underwriters, brokers, or dealers, in the interest of special classes of their security holders, or in the interest of other investment companies or persons engaged in other lines of business, rather than in the interest of all classes of such companies' security holders;

(3) when investment companies issue securities containing inequitable or discriminatory provisions, or fail to protect the preferences and privileges of the holders of their outstanding securities;

(4) when the control of investment companies is unduly concentrated through pyramiding or inequitable methods of control, or is inequitably distributed, or when investment companies are managed by irresponsible persons;

(5) when investment companies, in keeping their accounts, in maintaining reserves, and in computing their earnings and the asset value of their outstanding securities, employ unsound or misleading methods, or are not subjected to adequate independent scrutiny;

(6) when investment companies are reorganized, become inactive, or change the character of their business, or when the control or management thereof is transferred, without the consent of their security holders;

(7) when investment companies by excessive borrowing and the issuance of excessive amounts of senior securities increase unduly the speculative character of their junior securities; or

(8) when investment companies operate without adequate assets or reserves.

It is declared that the policy and purposes of this subchapter, in accordance with which the provisions of this subchapter shall be interpreted, are to mitigate and, so far as is feasible, to eliminate the conditions enumerated in this section which adversely affect the national public interest and the interest of investors.

(Aug. 22, 1940, ch. 686, title I, § 1, 54 Stat. 789.)

REFERENCES IN TEXT

"This subchapter," referred to in subsec. (b), in the original read "this title," meaning title I of act Aug. 22, 1940, which is principally classified to this subchapter. Section 29 of title I of act Aug. 22, 1940, amended sections 72(a) and 107(f) of Title 11, Bankruptcy.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Findings under Investment Advisers Act of 1940, see section 80b-1 of this title.

Necessity for control of holding companies, see section 79a of this title.

Necessity for regulation under—
  Securities Exchange Act of 1934, see section 78b of this title.
  Trust Indenture Act of 1939, see section 77bbb of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a-35 of this title.

§ 80a-2. Definitions

(a) When used in this subchapter, unless the context otherwise requires—

(1) "Advisory board" means a board, whether elected or appointed, which is distinct from the board of directors or board of trustees, of an investment company, and which is composed solely of persons who do not serve such company in any other capacity, whether or not the functions of such board are such as to render its members "directors" within the definition of that term, which board has advisory functions as to investments but has no power to determine that any security or other investment shall be purchased or sold by such company.

(2) "Affiliated company" means a company which is an affiliated person.

(3) "Affiliated person" of another person means (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincor-

porated investment company not having a board of directors, the depositor thereof.

(4) "Assignment" includes any direct or indirect transfer or hypothecation of a contract or chose in action by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but does not include an assignment of partnership interests incidental to the death or withdrawal of a minority of the members of the partnership having only a minority interest in the partnership business or to the admission to the partnership of one or more members who, after such admission, shall be only a minority of the members and shall have only a minority interest in the business.

(5) "Bank" means (A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this subchapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(6) "Broker" means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank or any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

(7) "Commission" means the Securities and Exchange Commission.

(8) "Company" means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his capacity as such.

(9) "Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.

Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 per centum of the voting securities of a company shall be presumed to control such company. Any person who does not so own more than 25 per centum of the voting securities of any company shall be presumed not to control such company. A natural person shall be presumed not to be a controlled person within the meaning of this subchapter. Any such presumption may be rebutted by evidence, but except as hereinafter provided, shall continue until a determination to the contrary made by the Commission by order either on its own motion or on application by an interested person. If an application filed hereunder is not granted or denied by the Commission within sixty days after filing thereof, the determination sought by the application shall be deemed to have been temporarily granted pending final determination of the Commission thereon. The Commission, upon its own motion or upon application, may by order revoke or modify any order issued under this paragraph whenever it shall find that the determination embraced in such original order is no longer consistent with the facts.

(10) "Convicted" includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

(11) "Dealer" means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting, or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.

(12) "Director" means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated, including any natural person who is a member of a board of trustees of a management company created as a common-law trust.

(13) "Employees' securities company" means any investment company or similar issuer all of the outstanding securities of which (other than short-term paper) are beneficially owned (A) by the employees or persons on retainer of a single employer or of two or more employers each of which is an affiliated company of the other, (B) by former employees of such employer or employers, (C) by members of the immediate family of such employees, persons on retainer, or former employees, (D) by any two or more of the foregoing classes of persons, or (E) by such employer or employers together with any one or more of the foregoing classes of persons.

(14) "Exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

(15) "Face-amount certificate" means any certificate, investment contract, or other security which represents an obligation on the part of its issuer to pay a stated or determinable sum or sums at a fixed or determinable date or dates more than twenty-four months after the date of issuance, in consideration of the payment of periodic installments of a stated or determinable amount (which security shall be known as a face-amount certificate

of the "installment type"); or any security which represents a similar obligation on the part of a face-amount certificate company, the consideration for which is the payment of a single lump sum (which security shall be known as a "fully paid" face-amount certificate).

(16) "Government security" means any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing.

(17) "Insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such.

(18) "Interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof.

(19) "Interested person" of another person means—

(A) when used with respect to an investment company—

(i) any affiliated person of such company,

(ii) any member of the immediate family of any natural person who is an affiliated person of such company,

(iii) any interested person of any investment adviser of or principal underwriter for such company,

(iv) any person or partner or employee of any person who at any time since the beginning of the last two fiscal years of such company has acted as legal counsel for such company,

(v) any broker or dealer registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] or any affiliated person of such a broker or dealer, and

(vi) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company or with any other investment company having the same investment adviser or principal underwriter or with the principal executive officer of such other investment company:

Provided, That no person shall be deemed to be an interested person of an investment company solely by reason of (aa) his being a member of its board of directors or advisory board or an owner of its securities, or (bb) his membership in the immediate family of any person specified in clause (aa) of this proviso; and

(B) when used with respect to an investment adviser of or principal underwriter for any investment company—

(i) any affiliated person of such investment adviser or principal underwriter,

(ii) any member of the immediate family of any natural person who is an affiliated person of such investment adviser or principal underwriter,

(iii) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued either by such investment adviser of principal underwriter or by a controlling person or such investment adviser or principal underwriter,

(iv) any person or partner or employee of any person who at any time since the beginning of the last two fiscal years of such investment company has acted as legal counsel for such investment adviser or principal underwriter,

(v) any broker or dealer registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] or any affiliated person of such a broker or dealer, and

(vi) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had at any time since the beginning of the last two fiscal years of such investment company a material business or professional relationship with such investment adviser or principal underwriter or with the principal executive officer or any controlling person of such investment adviser or principal underwriter.

For the purposes of this paragraph (19), "member of the immediate family" means any parent, spouse of a parent, child, spouse of a child, spouse, brother, or sister, and includes step and adoptive relationships. The Commission may modify or revoke any order issued under clause (vi) of subparagraph (A) or (B) of this paragraph whenever it finds that such order is no longer consistent with the facts. No order issued pursuant to clause (vi) of subparagraph (A) or (B) of this paragraph shall become effective until at least sixty days after the entry thereof, and no such order shall affect the status of any person for the purposes of this subchapter or for any other purpose for any period prior to the effective date of such order.

(20) "Investment adviser" of an investment company means (A) any person (other than a bona fide officer, director, trustee, member of an advisory board, or employee of such company, as such) who pursuant to contract with such company regularly furnishes advice to such company with respect to the desirability of investing in, purchasing or selling securities or other property, or is empowered to determine what securities or other property shall be purchased or sold by such company, and (B) any other person who pursuant to contract with a person described in clause (A) of this paragraph regularly performs substan-

tially all of the duties undertaken by such person described in said clause (A); but does not include (i) a person whose advice is furnished solely through uniform publications distributed to subscribers thereto, (ii) a person who furnishes only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities, (iii) a company furnishing such services at cost to one or more investment companies, insurance companies, or other financial institutions, (iv) any person the character and amount of whose compensation for such services must be approved by a court, or (v) such other persons as the Commission may by rules and regulations or order determine not to be within the intent of this definition.

(21) "Investment banker" means any person engaged in the business of underwriting securities issued by other persons, but does not include an investment company, any person who acts as an underwriter in isolated transactions but not as a part of a regular business, or any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

(22) "Issuer" means every person who issues or proposes to issue any security, or has outstanding any security which it has issued.

(23) "Lend" includes a purchase coupled with an agreement by the vendor to repurchase; "borrow" includes a sale coupled with a similar agreement.

(24) "Majority-owned subsidiary" of a person means a company 50 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a majority-owned subsidiary of such person.

(25) "Means or instrumentality of interstate commerce" includes any facility of a national securities exchange.

(26) "National securities exchange" means an exchange registered under section 6 of the Securities Exchange Act of 1934 [15 U.S.C. 78f].

(27) "Periodic payment plan certificate" means (A) any certificate, investment contract, or other security providing for a series of periodic payments by the holder, and representing an undivided interest in certain specified securities or in a unit or fund of securities purchased wholly or partly with the proceeds of such payments, and (B) any security the issuer of which is also issuing securities of the character described in clause (A) of this paragraph and the holder of which has substantially the same rights and privileges as those which holders of securities of the character described in said clause (A) have upon completing the periodic payments for which such securities provide.

(28) "Person" means a natural person or a company.

(29) "Principal underwriter" of or for any investment company other than a closed-end company, or of any security issued by such a company, means any underwriter who as principal purchases from such company, or pursuant to contract has the right (whether absolute or conditional) from time to time to purchase from such company, any such security for distribution, or who as agent for such company sells or has the right to sell any such security to a dealer or to the public or both, but does not include a dealer who purchases from such company through a principal underwriter acting as agent for such company. "Principal underwriter" of or for a closed-end company or any issuer which is not an investment company, or of any security issued by such a company or issuer, means any underwriter who, in connection with a primary distribution of securities, (A) is in privity of contract with the issuer or an affiliated person of the issuer; (B) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or (C) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(30) "Promoter" of a company or a proposed company means a person who, acting alone or in concert with other persons, is initiating or directing, or has within one year initiated or directed, the organization of such company.

(31) "Prospectus", as used in section 80a-22 of this title, means a written prospectus intended to meet the requirements of section 10(a) of the Securities Act of 1933 [15 U.S.C. 77j(a)] and currently in use. As used elsewhere, "prospectus" means a prospectus as defined in the Securities Act of 1933 [15 U.S.C. 77a et seq.].

(32) "Redeemable security" means any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

(33) "Reorganization" means (A) a reorganization under the supervision of a court of competent jurisdiction; (B) a merger or consolidation; (C) a sale of 75 per centum or more in value of the assets of a company; (D) a restatement of the capital of a company, or an exchange of securities issued by a company for any of its own outstanding securities; (E) a voluntary dissolution or liquidation of a company; (F) a recapitalization or other procedure or transaction which has for its purpose the alteration, modification, or elimination of any of the rights, preferences, or privileges of any class of securities issued by a company, as provided in its charter or other instrument creating or defining such rights, preferences, and privileges; (G) an exchange of securities issued by a company for outstanding securities issued by another company or companies, preliminary to and for the purpose of effecting or consummating any of the foregoing; or (H) any exchange of securities by a company which is not an investment company for securities issued by a registered investment company.

(34) "Sale", "sell", "offer to sell", or "offer for sale" includes every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.

(35) "Sales load" means the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. In the case of a periodic payment plan certificate, "sales load" includes the sales load on any investment company securities in which the payments made on such certificate are invested, as well as the sales load on the certificate itself.

(36) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(37) "Separate account" means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(38) "Short-term paper" means any note, draft, bill of exchange, or banker's acceptance payable on demand or having a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof payable on demand or having a maturity likewise limited; and such other classes of securities, of a commercial rather than an investment character, as the Commission may designate by rules and regulations.

(39) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Canal Zone, the Virgin Islands, or any other possession of the United States.

(40) "Underwriter" means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor's or seller's commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. When the distribution of the securities in respect of which any person is an underwriter is completed such person shall cease to be an underwriter in respect of such securities or the issuer thereof.

(41) "Value", with respect to assets of registered investment companies, except as provided in subsection (b) of section 80a-28 of this title, means—

(A) as used in sections 80a-3, 80a-5, and 80a-12 of this title, (i) with respect to securities owned at the end of the last preceding fiscal quarter for which market quotations are readily available, the market value at the end of such quarter; (ii) with respect to other securities and assets owned at the end of the last preceding fiscal quarter, fair value at the end of such quarter, as determined in good faith by the board of directors; and (iii) with respect to securities and other assets acquired after the end of the last preceding fiscal quarter, the cost thereof; and

(B) as used elsewhere in this subchapter, (i) with respect to securities for which market quotations are readily available, the market value of such securities; and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors;

in each case as of such time or times as determined pursuant to this subchapter, and the rules and regulations issued by the Commission hereunder. Notwithstanding the fact that market quotations for securities issued by controlled companies are available, the board of directors may in good faith determine the value of such securities: *Provided*, That the value so determined is not in excess of the higher of market value or asset value of such securities in the case of majority-owned subsidiaries, and is not in excess of market value in the case of other controlled companies.

For purposes of the valuation of those assets of a registered diversified company which are not subject to the limitations provided for in section 80a-5(b)(1) of this title, the Commission may, by rules and regulations or orders, permit any security to be carried at cost, if it shall determine that such procedure is consistent with the general intent and purposes of this subchapter. For purposes of sections 80a-5 and 80a-12 of this title in lieu of values determined as provided in clause (A) above, the Commission shall by rules and regulations permit valuation of securities at cost or other basis in cases where it may be more convenient for such company to make its computations on such basis by reason of the necessity or desirability of complying with the provisions of any United States revenue laws or rules and regulations issued thereunder, or the laws or the rules and regulations issued thereunder of any State in which the securities of such company may be qualified for sale.

The foregoing definition shall not derogate from the authority of the Commission with respect to the reports, information, and documents to be filed with the Commission by any registered company, or with respect to the accounting policies and principles to be followed by any such company, as provided in sections 80a-8, 80a-29, and 80a-30 of this title.

(42) "Voting security" means any security presently entitling the owner or holder thereof to vote for the election of directors of a company. A specified percentage of the outstanding voting securities of a company means such amount of its outstanding voting securities as entitles the holder or holders thereof to cast said specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such company are entitled to cast. The vote of a majority of the outstanding voting securities of a company means the vote, at the annual or a special meeting of the security holders of such company duly called, (A) of 67 per centum or more of the voting securities present at such meeting, if the holders of more than 50 per centum of the outstanding voting securities of such company are present or represented by proxy; or (B) of more than 50 per centum of the outstanding voting securities of such company, whichever is the less.

(43) "Wholly-owned subsidiary" of a person means a company 95 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a wholly-owned subsidiary of such person.

(44) "Securities Act of 1933" [15 U.S.C. 77a et seq.], "Securities Exchange Act of 1934" [15 U.S.C. 78a et seq.], "Public Utility Holding Company Act of 1935" [15 U.S.C. 79 et seq.], and "Trust Indenture Act of 1939" [15 U.S.C. 77aaa et seq.] mean those acts, respectively, as heretofore or hereafter amended.

(45) "Savings and loan association" means a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution, and a receiver, conservator, or other liquidating agent of any such institution.

(b) No provision in this subchapter shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(Aug. 22, 1940, ch. 686, title I, § 2, 54 Stat. 790; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Aug. 10, 1954, ch. 667, title IV, § 401, 68 Stat. 689; June 25, 1959, Pub. L. 86-70, § 12(d), 73 Stat. 143; July 12, 1960, Pub. L. 86-624, § 7(c), 74 Stat. 412; Dec. 14, 1970, Pub. L. 91-547, § 2(a), 84 Stat. 1413.)

REFERENCES IN TEXT

"This subchapter", referred to in subsecs. (a) and (b), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

The Securities Exchange Act of 1934, referred to in subsecs. (a)(19), (44), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

The Securities Act of 1933, referred to in subsecs. (a)(31), (44), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

The Public Utility Holding Company Act of 1935, referred to in subsec. (a)(44), is act Aug. 26, 1935, ch. 687, title I, 49 Stat. 838, which is classified generally to chapter 2C (§ 79 et seq.) of this title. For complete classification of this Act to the Code, see section 79 of this title and Tables volume.

The Trust Indenture Act of 1939, referred to in subsec. (a)(44), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, which is classified generally to subchapter III (§ 77aaa et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77aaa of this title and Tables volume.

CODIFICATION

Words "Philippine Islands" were deleted from definition of term "State" under authority of Proc. No. 2695, which granted independence to the Philippine Islands. Proc. No. 2695 was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and is set out as a note under that section.

AMENDMENTS

1970—Subsec. (a)(5). Pub. L. 91-547, § 2(a)(1), substituted "under the authority of the Comptroller of the Currency" for "under section 248(k) of title 12,".

Subsec. (a)(19). Pub. L. 91-547, § 2(a)(3), added par. (19). Former par. (19) redesignated (20).

Subsecs. (a)(20) to (36). Pub. L. 91-547, § 2(a)(2), redesignated former pars. (19) to (35) as (20) to (36).

Subsec. (a)(37). Pub. L. 91-547, § 2(a)(4), added par. (37). Former par. (37) redesignated (39).

Subsecs. (a)(38) to (44). Pub. L. 91-547, § 2(a)(2), redesignated former pars. (36) to (42) as (38) to (44).

Subsec. (a)(45). Pub. L. 91-547, § 2(a)(5), added par. (45).

1960—Subsec. (a)(37). Pub. L. 86-624 eliminated "Hawaii," preceding "Puerto Rico".

1959—Subsec. (a). Pub. L. 86-70 eliminated "Alaska," preceding "Hawaii" in cl. (37).

1954—Subsec. (a)(30). Act Aug. 10, 1954, substituted "section 10(a) of the Securities Act of 1933" for "section 5(b) of the Securities Act of 1933".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment effective 60 days after Aug. 10, 1954, see Effective Date of 1954 Amendment note under section 77b of this title.

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Applicability to United States, States, or their governmental agencies of—

- Investment Advisers Act of 1940, see section 80b–2 of this title.
- Public Utility Holding Company Act of 1935, see section 79b of this title.
- Securities Exchange Act of 1934, see section 78c of this title.

Changes in investment policy, provisions applicable to vote cast at meeting, see section 80a–13 of this title.

Common-law trusts, applicability of provisions as to majority of voting securities, see section 80a–15 of this title.

Definition of terms—

- Affiliate of specified person, company, director, person, sale, sell, security, and voting security under Public Utility Holding Company Act of 1935, see section 79b of this title.
- Affiliated person, assignment, bank, broker, company, control, convicted, dealer, director, exchange, insurance company, investment adviser, national securities exchange, person, securities, and underwriter under Investment Advisers Act of 1940, see section 80b–2 of this title.
- Bank, broker, dealer, director, exchange, issuer, person, sale, sell, and security, see section 78c of this title.
- Control not applicable to holding company affiliate, see section 80a–3 of this title.
- Dealer, issuer, person, prospectus, sale, sell, security, and underwriter, see section 77b of this title.
- Director, prospectus, sale, sell, underwriter, and voting security under Trust Indenture Act of 1939, see section 77ccc of this title.

Majority provisions applicable to vote cast at shareholder's meeting of common-law trust, see section 80a–31 of this title.

Section Referred to in Other Sections

This section is referred to in sections 80a–13, 80a–15, 80a–31 of this title; title 11 section 107; title 26 sections 72, 265, 401.

§ 80a–3. Definition of investment company

(a) Definitions

When used in this subchapter, "investment company" means any issuer which—

(1) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities;

(2) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or

(3) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

As used in this section, "investment securities" includes all securities except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which are not investment companies.

(b) Exemption from provisions

Notwithstanding paragraph (3) of subsection (a) of this section, none of the following persons is an investment company within the meaning of this subchapter:

(1) Any issuer primarily engaged, directly or through a wholly-owned subsidiary or subsidiaries, in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities.

(2) Any issuer which the Commission, upon application by such issuer, finds and by order declares to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly or (A) through majority-owned subsidiaries or (B) through controlled companies conducting similar types of businesses. The filing of an application under this paragraph in good faith by an issuer other than a registered investment company shall exempt the applicant for a period of sixty days from all provisions of this subchapter applicable to investment companies as such. For cause shown, the Commission by order may extend such period of exemption for an additional period or periods. Whenever the Commission, upon its own motion or upon application, finds that the circumstances which gave rise to the issuance of an order granting an application under this paragraph no longer exist, the Commission shall by order revoke such order.

(3) Any issuer all the outstanding securities of which (other than short-term paper and directors' qualifying shares) are directly or indirectly owned by a company excepted from the definition of investment company by paragraph (1) or (2) of this subsection.

(c) Further exemptions

Notwithstanding subsection (a) of this section, none of the following persons is an investment company within the meaning of this subchapter:

(1) Any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities. For the purposes of this paragraph, beneficial ownership by a company shall be deemed to be beneficial ownership by one person; except that, if such company owns 10 per centum or more of the outstanding voting securities of the issuer, the beneficial ownership shall be deemed to be that of the holders of such company's outstanding securities (other than short-term paper).

(2) Any person primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities, whose gross income normally is derived principally from such business and related activities.

(3) Any bank or insurance company; any savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, or any re-

ceiver, conservator, liquidator, liquidating agent, or similar official or person thereof or therefor; any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian; or any common trust fund or similar fund, established before June 22, 1936, by a corporation which is supervised or examined by State or Federal authority having supervision over banks, if a majority of the units of beneficial interest in such fund, other than units owned by charitable or educational institutions, are held under instruments providing for payment of income to one or more persons and of principal to another or others.

(4) Any person substantially all of whose business is confined to making small loans, industrial banking, or similar businesses.

(5) Any person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, and who is primarily engaged in one or more of the following businesses: (A) Purchasing or otherwise acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance, and services; (B) making loans to manufacturers, wholesalers, and retailers of, and to prospective purchasers of, specified merchandise, insurance, and services; and (C) purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.

(6) Any company primarily engaged, directly or through majority-owned subsidiaries, in one or more of the businesses described in paragraphs (3), (4), and (5) of this subsection, or in one or more of such businesses (from which not less than 25 per centum of such company's gross income during its last fiscal year was derived) together with an additional business or businesses other than investing, reinvesting, owning, holding, or trading in securities.

(7) Any company (A) which is subject to regulation under section 314 of title 49, except that this exception shall not apply to a company which the Commission finds and by order declares to be primarily engaged, directly or indirectly, in the business of investing, reinvesting, owning, holding, or trading in securities, or (B) whose entire outstanding stock is owned or controlled by a company excepted under clause (A) hereof, if the assets of the controlled company consist substantially of securities issued by companies which are subject to regulation under section 314 of title 49.

(8) Any company subject to regulation under the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.].

(9) Any person substantially all of whose business consists of owning or holding oil, gas, or other mineral royalties or leases, or fractional interests therein, or certificates of interest or participation in or investment contracts relative to such royalties, leases, or fractional interests.

(10) Any company organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(11) Any employees' stock bonus, pension, or profit-sharing trust which meets the requirements for qualification under section 401 of title 26; or any collective trust fund maintained by a bank consisting solely of assets of such trusts; or any separate account the assets of which are derived solely from (A) contributions under pension or profit-sharing plans which meet the requirements of such section or the requirements for deduction of the employer's contribution under section 404(a)(2) of title 26, and (B) advances made by an insurance company in connection with the operation of such separate account.

(12) Any voting trust the assets of which consist exclusively of securities of a single issuer which is not an investment company.

(13) Any security holders' protective committee or similar issuer having outstanding and issuing no securities other than certificates of deposit and short-term paper.

(Aug. 22, 1940, ch. 686, title I, § 3, 54 Stat. 797; Oct. 21, 1942, ch. 619, title I, § 162(e), 56 Stat. 867; July 1, 1966, Pub. L. 89-485, § 13(i), 80 Stat. 243; Dec. 14, 1970, Pub. L. 91-547, § 3(a), (b), 84 Stat. 1414; Feb. 5, 1976, Pub. L. 94-210, title III, § 308(c), 90 Stat. 57.)

REFERENCES IN TEXT

"This subchapter", referred to in subsecs. (a) to (c), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

The Public Utility Holding Company Act of 1935, referred to in subsec. (c)(8), is act Aug. 26, 1935, ch. 687, title I, 49 Stat. 838, which is classified generally to chapter 2C (§ 79 et seq.) of this title. For complete classification of this Act to the Code, see section 79 of this title and Tables volume.

AMENDMENTS

1976—Subsec. (c)(7). Pub. L. 94-210 designated existing provisions as cls. (A) and (B) and, as so designated, in cl. (A) provided for applicability to section 314 of title 49 and added exception to exception, in cl. (B) added provisions relating to companies regulated under section 314 of title 49 and made changes in phraseology to conform cl. to cl. (A), and struck out proviso relating to assets of controlled company.

1970—Subsec. (b)(2). Pub. L. 91-547, § 3(a), inserted in second sentence "in good faith" after "paragraph".

Subsec. (c). Pub. L. 91-547, § 3(b)(1), deleted reference to subsec. (b) in the introductory text.

Subsec. (c)(4). Pub. L. 91-547, § 3(b)(2), redesignated former par. (5) as (4). See 1966 Amendment note with respect to repeal of former par. (4).

Subsec. (c)(5). Pub. L. 91-547, § 3(b)(2), (3), redesignated former par. (6) as (5) and inserted "redeemable securities," before "face-amount certificates". Former par. (5) redesignated (4).

Subsec. (c)(6). Pub. L. 91-547, § 3(b)(2), redesignated former par. (7) as (6), inserted reference to par. (4), and deleted reference to par. (6). Former par. (6) redesignated (5).

Subsec. (c)(7). Pub. L. 91-547, § 3(b)(2), redesignated former par. (9) as (7). Former par. (7) redesignated (6).

Subsec. (c)(8). Pub. L. 91-547, § 3(b)(2), (4), redesignated former par. (10) as (8), substituted therein "subject to regulation" for "with a registration in effect as a holding company", and struck out former par. (8) provision excluding as an investment company any company 90 per centum or more of the value of whose investment securities are represented by securities of a single issuer included within a class of persons enumerated in pars. (5), (6), or (7) of this subsection.

Subsecs. (c)(9), (10). Pub. L. 91-547, § 3(b)(2), redesignated former pars. (11) and (12) as (9) and (10). Former pars. (9) and (10) redesignated (7) and (8).

Subsec. (c)(11). Pub. L. 91-547, § 3(b)(2), (5), redesignated former par (13) as (11), substituted "requirements for qualification under section 401 of title 26 [I.R.C. 1954]" for "conditions of section 165 of title 26, as amended [I.R. 1939]", and inserted provisions for exclusion as an investment company any collective trust fund maintained by a bank consisting solely of assets of such trusts or any separate account the assets of which are derived from certain sources. Former par. (11) redesignated (9).

Subsecs. (c)(12), (13). Pub. L. 91-547, § 3(b)(2), redesignated former pars. (14) and (15) as (12) and (13). Former pars. (12) and (13) redesignated (10) and (11).

Subsecs. (c)(14), (15). Pub. L. 91-547, § 3(b)(2), redesignated former pars. (14) and (15) as (12) and (13).

1966—Subsec. (c)(4). Pub. L. 89-485 repealed provisions which exempt holding company affiliates granted a general voting permit by the Board of Governors of the Federal Reserve System before 1940 and any such affiliates with a later voting permit concerning which determinations were made of being primarily engaged, directly or indirectly, in the business of holding the stock of, and managing or controlling, banks, banking associations, savings banks, or trust companies.

1942—Subsec. (c)(13). Act Oct. 31, 1942, added "as amended".

Effective Date of 1976 Amendment

Section 308(d)(2) and (3) of Pub. L. 94-210, as amended by Pub. L. 94-555, title II, § 220(c), Oct. 19, 1976, 90 Stat. 2629, provided that:

"(2) The amendment made by subsection (b) of this section [amending section 78m of this title] shall not apply to any report by any person with respect to a fiscal year of such person which began before the date of enactment of this Act [Feb. 5, 1976].

"(3) The amendment made by subsection (c) of this section [amending subsec. (c)(7) of this section] shall take effect on the 60th day after the date of enactment of this Act [Feb. 5, 1976]".

Effective Date of 1970 Amendment

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

Effective Date of 1942 Amendment

Section 162(d) of act Oct. 21, 1942 (Revenue Act of 1942), as amended by act Dec. 17, 1943, ch. 346, § 3, 57 Stat. 602, provided:

"Taxable Years to Which Amendments Applicable.—The amendments made by this section [to this section and sections 22, 23, and 165 of Title 26, I.R.C. 1939] shall be applicable as to both the employer and employees only with respect to taxable years of the employer beginning after December 31, 1941, except that—

"(1) In the case of a stock bonus, pension, profit-sharing, or annuity plan in effect on or before September 1, 1942,

"(A) such a plan shall not become subject to the requirements of section 165(a)(3), (4), (5), and (6) [of Title 26, I.R.C. 1939] until the beginning of the first taxable year beginning after December 31, 1942.

"(B) such a plan shall be considered as satisfying the requirements of section 165(a), (3), (4), and (5) and (6) [of Title 26, I.R.C. 1939] for the period beginning with the beginning of the first taxable year following December 31, 1942, and ending December 31, 1944, if the provisions thereof satisfy such requirements by December 31, 1944, and if by that time such provisions are made effective for all purposes as of a date not later than January 1, 1944.

"(C) if the contribution of an employer to such a plan in the employer's taxable year beginning in 1942 exceeds the maximum amount deductible for such year under section 23(p)(1), as amended by this section, the amount deductible in such year shall be not less than the sum of—

"(i) the amount paid in such taxable year prior to September 1, 1942, and deductible under section 23(a) or 23(p) prior to amendment by this section, and

"(ii) with respect to the amount paid in such taxable year on or after September 1, 1942, that proportion of the amount deductible for the taxable year under section 23(p)(1), as amended by this section, which the number of months after August 31, 1942, in the taxable year bears to twelve.

"(2) In the case of a stock bonus, pension, profit sharing or annuity plan put into effect after September 1, 1942, such a plan shall be considered as satisfying the requirements of section 165(a)(3), (4), (5), and (6) [of Title 26, I.R.C. 1939] for the period beginning with the date such plan is put into effect and ending December 31, 1944, if the provisions thereof satisfy such requirements by December 31, 1944, and if by that time such provisions are made effective for all purposes as of a date not later than the effective date of such plan or January 1, 1944, whichever is the later."

Transfer of Functions

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

Cross References

Beneficial ownership, determination of, see section 80a-6 of this title.

Value as to assets of registered investment companies, definition of, see section 80a-2 of this title.

Section Referred to in Other Sections

This section is referred to in sections 80a-2, 80a-6, 80b-5 of this title; title 26 sections 851, 1246.

§ 80a-4. Classification of investment companies

For the purposes of this subchapter, investment companies are divided into three principal classes, defined as follows:

(1) "Face-amount certificate company" means an investment company which is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or which has been engaged in such business and has any such certificate outstanding.

(2) "Unit investment trust" means an investment company which (A) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities; but does not include a voting trust.

(3) "Management company" means any investment company other than a face-amount certificate company or a unit investment trust.

(Aug. 22, 1940, ch. 686, title I, § 4, 54 Stat. 799.)

References in Text

"This subchapter", referred to in text, in the original read "this title". See References in Text note set out under section 80a-1 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Appointment of trustees in bankruptcy for face-amount certificate company, see section 72 of Title 11, Bankruptcy.

Registration statement, classification to be included, see section 80a-8 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a-8 of this title; title 11 sections 72, 107; title 26 section 4914.

§ 80a-5. Subclassification of management companies

(a) Open-end and closed-end companies

For the purposes of this subchapter, management companies are divided into open-end and closed-end companies, defined as follows:

(1) "Open-end company" means a management company which is offering for sale or has outstanding any redeemable security of which it is the issuer.

(2) "Close-end[1] company" means any management company other than an open-end company.

(b) Diversified and non-diversified companies

Management companies are further divided into diversified companies and non-diversified companies, defined as follows:

(1) "Diversified company" means a management company which meets the following requirements: At least 75 per centum of the value of its total assets is represented by cash and cash items (including receivables), Government securities, securities of other investment companies, and other securities for the purposes of this calculation limited in respect of any one issuer to an amount not greater in value than 5 per centum of the value of the total assets of such management company and to not more than 10 per centum of the outstanding voting securities of such issuer.

(2) "Non-diversified company" means any management company other than a diversified company.

(c) Loss of status as diversified company

A registered diversified company which at the time of its qualification as such meets the requirements of paragraph (1) of subsection (b) of this section shall not lose its status as a diversified company because of any subsequent discrepancy between the value of its various investments and the requirements of said paragraph, so long as any such discrepancy existing immediately after its acquisition of any security or other property is neither wholly nor partly the result of such acquisition.

(Aug. 22, 1940, ch. 686, title I, § 5, 54 Stat. 800.)

REFERENCES IN TEXT

"This subchapter", referred to in subsec. (a), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Acquisition of securities by registered investment company deemed investment in an investment company, see section 80a-12 of this title.

Registration statement, subclassification to be included, see section 80a-8 of this title.

Value as to assets of registered investment companies, definition of, see section 80a-2 of this title.

Vote required for change in subclassification, see section 80a-13 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a-2, 80a-8, 80a-12, 80a-13 of this title.

§ 80a-6. Exemptions

(a) Exemption of specified investment companies

The following investment companies are exempt from the provisions of this subchapter:

(1) Any company organized or otherwise created under the laws of and having its principal office and place of business in Puerto Rico, the Canal Zone, the Virgin Islands, or any other possession of the United States; but such exemption shall terminate if any security of which such company is the issuer is offered for sale or sold after the effective date of this subchapter, by such company or an underwriter therefor, to a resident of any State other than the State in which such company is organized.

(2) Any company for which, in a proceeding in any court of the United States or of a State, a receiver, trustee in bankruptcy, or similar officer had been appointed or elected prior to the effective date of this subchapter, and every such officer so appointed or elected prior to the effective date of this subchapter; but such exemption shall continue only so long as (A) the conduct of such company's business remains subject to the supervision of such court or officer thereof, and (B) such company does not sell exclusively for cash any security of which it is the issuer, except short-term paper and ordinary receiver's or trustee's certificates.

(3) Any company which since the effective date of this subchapter or within five years prior to such date has been reorganized under the supervision of a court of competent jurisdiction, if (A) such company was not an investment company at the commencement of such reorganization proceedings, (B) at the conclusion of such proceedings all outstanding securities of such company were owned by creditors of such company or by persons to whom such securities were issued on account of creditors' claims, and (C) more than 50 per centum of the voting securities of such company, and securities representing more than 50 per centum of the net asset value of such company, are currently owned beneficially by not more than twenty-five persons; but such exemption shall terminate if any security of which such company is the issuer is offered for sale or sold to the public after the conclu-

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[1] So in original. Probably should be "Closed-end".

sion of such proceedings by the issuer or by or through any underwriter. For the purposes of this paragraph, any new company organized as part of the reorganization shall be deemed the same company as its predecessor; and beneficial ownership shall be determined in the manner provided in section 80a-3(c)(1) of this title.

(4) Any issuer as to which there is outstanding a writing filed with the Commission by the Federal Savings and Loan Insurance Corporation stating that exemption of such issuer from the provisions of this subchapter is consistent with the public interest and the protection of investors and is necessary or appropriate by reason of the fact that such issuer holds or proposes to acquire any assets or any product of any assets which have been segregated (A) from assets of any company which at the filing of such writing is an insured institution within the meaning of section 1724(a) of title 12, or (B) as a part of or in connection with any plan for or condition to the insurance of accounts of any company by said corporation or the conversion of any company into a Federal savings and loan association. Any such writing shall expire when canceled by a writing similarly filed or at the expiration of two years after the date of its filing, whichever first occurs; but said corporation may, nevertheless, before, at, or after the expiration of any such writing file another writing or writings with respect to such issuer.

(5) Any company which prior to March 15, 1940, was and now is a wholly-owned subsidiary of a registered face-amount certificate company and was prior to said date and now is organized and operating under the insurance laws of any State and subject to supervision and examination by the insurance commissioner thereof, and which prior to March 15, 1940, was and now is engaged, subject to such laws, in business substantially all of which consists of issuing and selling only to residents of such State and investing the proceeds from, securities providing for or representing participations or interests in intangible assets consisting of mortgages or other liens on real estate or notes or bonds secured thereby or having outstanding such securities so issued and sold.

(b) Exemption of employees' security company upon application; matters considered

Upon application by any employees' security company, the Commission shall by order exempt such company from the provisions of this subchapter and of the rules and regulations hereunder, if and to the extent that such exemption is consistent with the protection of investors. In determining the provisions to which such an order of exemption shall apply, the Commission shall give due weight, among other things, to the form of organization and the capital structure of such company, the persons by whom its voting securities, evidences of indebtedness, and other securities are owned and controlled, the prices at which securities issued by such company are sold and the sales load thereon, the disposition of the proceeds of such sales, the character of the securities in which such proceeds are invested, and any relationship between such company and the issuer of any such security.

(c) Exemption of persons, securities or any class or classes of persons as necessary and appropriate in public interest

The Commission, by rules and regulations upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this subchapter or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter.

(d) Exemption of closed-end investment companies

The Commission, by rules and regulations or order, shall exempt a closed-end investment company from any or all provisions of this subchapter, but subject to such terms and conditions as may be necessary or appropriate in the public interest or for the protection of investors, if—

(1) the aggregate sums received by such company from the sale of all its outstanding securities, plus the aggregate offering price of all securities of which such company is the issuer and which it proposes to offer for sale, do not exceed $100,000;

(2) no security of which such company is the issuer has been or is proposed to be sold by such company or any underwriter therefor, in connection with a public offering, to any person who is not a resident of the State under the laws of which such company is organized or otherwise created; and

(3) such exemption is not contrary to the public interest or inconsistent with the protection of investors.

(e) Application of certain specified provisions of subchapter to otherwise exempt companies

If, in connection with any rule, regulation, or order under this section exempting any investment company from any provision of section 80a-7 of this title, the Commission deems it necessary or appropriate in the public interest or for the protection of investors that certain specified provisions of this subchapter pertaining to registered investment companies shall be applicable in respect of such company, the provisions so specified shall apply to such company, and to other persons in their transactions and relations with such company, as though such company were a registered investment company.

(Aug. 22, 1940, ch. 686, title I, § 6, 54 Stat. 800; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; June 25, 1959, Pub. L. 86-70, § 12(e), 73 Stat. 143; July 12, 1960, Pub. L. 86-624, § 7(c), 74 Stat. 412.)

REFERENCES IN TEXT

"This subchapter", referred to in subsecs. (a) to (e), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

The effective date of this subchapter, referred to in subsec. (a)(3), in the original read "the effective date of this title". For effective date of this subchapter, see section 80a-52 of this title.

CODIFICATION

Words "Philippine Islands" were deleted from subsec. (a)(1) following "Puerto Rico" under the authority of Proc. No. 2695, granting independence to the Philippine Islands, which was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and is set out as a note under that section.

AMENDMENTS

1960—Subsec. (a)(1). Pub. L. 86-624 eliminated "Hawaii," preceding "Puerto Rico".

1959—Subsec. (a)(1). Pub. L. 86-70 eliminated "Alaska," preceding "Hawaii".

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

INVESTMENT COMPANY PROVISIONS INAPPLICABLE TO CERTAIN LIFE INSURANCE BENEFITS ISSUED PRIOR TO MARCH 23, 1959

Subchapter inapplicable to certain life insurance benefits issued prior to Mar. 23, 1959, under certain conditions, see section 29 of Pub. L. 91-547, Dec. 14, 1970, 84 Stat. 1436, set out as a note under section 77c of this title.

CROSS REFERENCES

Transactions by unregistered investment companies, see section 80a-7 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a-7, 80a-15 of this title.

§ 80a-7. Transactions by unregistered investment companies

(a) Prohibition of transactions in interstate commerce by companies

No investment company organized or otherwise created under the laws of the United States or of a State and having a board of directors, unless registered under section 80a-8 of this title, shall directly or indirectly—

(1) offer for sale, sell, or deliver after sale, by the use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person; or offer for sale, sell, or deliver after sale any such security or interest, having reason to believe that such security or interest will be made the subject of a public offering by use of the mails or any means or instrumentality of interstate commerce;

(2) purchase, redeem, retire, or otherwise acquire or attempt to acquire, by use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person;

(3) control any investment company which does any of the acts enumerated in paragraphs (1) and (2) of this subsection;

(4) engage in any business in interstate commerce; or

(5) control any company which is engaged in any business in interstate commerce.

The provisions of this subsection shall not apply to transactions of an investment company which are merely incidental to its dissolution.

(b) Prohibition of transactions in interstate commerce by depositors or trustees of companies

No depositor or trustee of or underwriter for any investment company, organized or otherwise created under the laws of the United States or of a State and not having a board of directors, unless such company is registered under section 80a-8 of this title or exempt under section 80a-6 of this title, shall directly or indirectly—

(1) offer for sale, sell, or deliver after sale, by use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security of which such company is the issuer; or offer for sale, sell, or deliver after sale any such security or interest, having reason to believe that such security or interest will be made the subject of a public offering by use of the mails or any means or instrumentality of interstate commerce;

(2) purchase, redeem, or otherwise acquire or attempt to acquire, by use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security of which such company is the issuer; or

(3) sell or purchase for the account of such company, by use of the mails or any means or instrumentality of interstate commerce, any security or interest in a security, by whomever issued.

The provisions of this subsection shall not apply to transactions which are merely incidental to the dissolution of an investment company.

(c) Prohibition of transactions in interstate commerce by promoters of proposed investment companies

No promoter of a proposed investment company, and no underwriter for such a promoter, shall make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to offer for sale, sell, or deliver after sale, in connection with a public offering, any preorganization certificate or subscription for such a company.

(d) Prohibition of transactions in interstate commerce by companies not organized under laws of the United States or a state; exceptions

No investment company, unless organized or otherwise created under the laws of the United States or of a State, and no depositor or trustee of or underwriter for such a company not so organized or created, shall make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to offer for sale, sell, or deliver after sale, in connection with a public offering, any security of which such company is the issuer. Notwithstanding the provisions of this subsection and of section 80a-8(a) of this title, the Commission is authorized, upon application by an investment company organized or otherwise created under the laws of a foreign country, to issue a conditional or unconditional order permitting such company to register under this subchapter, and to make a public offering of its securities by use of the mails and means or instrumentalities of interstate commerce, if the Commission finds that, by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of this subchapter against such company and that the issuance of such order is otherwise consistent with the public interest and the protection of investors.

(Aug. 22, 1940, ch. 686, title I, § 7, 54 Stat. 802.)

REFERENCES IN TEXT

"This subchapter", referred to in subsec. (d), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Application of rules, etc., to exempt investment company, see section 80a-6 of this title.

Enforcement of compliance with this section, see section 80a-41 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a-6, 80a-41 of this title.

§ 80a-8. Registration of investment companies

(a) Notification of registration; effective date of registration

Any investment company organized or otherwise created under the laws of the United States or of a State may register for the purposes of this subchapter by filing with the Commission a notification of registration, in such form as the Commission shall by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. An investment company shall be deemed to be registered upon receipt by the Commission of such notification of registration.

(b) Registration statement; contents

Every registered investment company shall file with the Commission, within such reasonable time after registration as the Commission shall fix by rules and regulations, an original and such copies of a registration statement, in such form and containing such of the following information and documents as the Commission shall by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors:

(1) a recital of the policy of the registrant in respect of each of the following types of activities, such recital consisting in each case of a statement whether the registrant reserves freedom of action to engage in activities of such type, and if such freedom of action is reserved, a statement briefly indicating, insofar as is practicable, the extent to which the registrant intends to engage therein: (A) the classification and subclassifications, as defined in sections 80a-4 and 80a-5 of this title, within which the registrant proposes to operate; (B) borrowing money; (C) the issuance of senior securities; (D) engaging in the business of underwriting securities issued by other persons; (E) concentrating investments in a particular industry or group of industries; (F) the purchase and sale of real estate and commodities, or either of them; (G) making loans to other persons; and (H) portfolio turn-over (including a statement showing the aggregate dollar amount of purchases and sales of portfolio securities, other than Government securities, in each of the last three full fiscal years preceding the filing of such registration statement);

(2) a recital of all investment policies of the registrant, not enumerated in paragraph (1), which are changeable only if authorized by shareholder vote;

(3) a recital of all policies of the registrant, not enumerated in paragraphs (1) and (2), in respect of matters which the registrant deems matters of fundamental policy;

(4) the name and address of each affiliated person of the registrant; the name and principal address of every company, other than the registrant, of which each such person is an officer, director, or partner; a brief statement of the business experience for the preceding five years of each officer and director of the registrant; and

(5) the information and documents which would be required to be filed in order to register under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], all securities (other than short-term paper) which the registrant has outstanding or proposes to issue.

(c) Alternative information

The Commission shall make provision, by permissive rules and regulations or order, for the filing of the following, or so much of the following as the Commission may designate, in lieu of the information and documents required pursuant to subsection (b) of this section:

(1) copies of the most recent registration statement filed by the registrant under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and currently effective under such Act, or if the registrant has not filed such a statement, copies of a registration statement filed by the registrant under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] and currently effective under such Act;

(2) copies of any reports filed by the registrant pursuant to section 78m or 78o(d) of this title; and

(3) a report containing reasonably current information regarding the matters included in copies filed pursuant to paragraphs (1) and (2) of this subsection, and such further information regarding matters not included in such copies as the Commission is authorized to require under subsection (b) of this section.

(d) Registration of unit investment trusts

If the registrant is a unit investment trust substantially all of the assets of which are securities issued by another registered investment company, the Commission is authorized to prescribe for the registrant, by rules and regulations or order, a registration statement which eliminates inappropriate duplication of information contained in the registration statement filed under this section by such other investment company.

(e) Failure to file registration statement or omissions of material fact

If it appears to the Commission that a registered investment company has failed to file the registration statement required by this section or a report required pursuant to section 80a-29 (a) or (b) of this title, or has filed such a registration statement or report but omitted therefrom material facts required to be stated therein, or has filed such a registration statement or report in violation of section 80a-33(b) of this title, the Commission shall notify such company by registered mail or by certified mail of the failure to file such registration statement or report, or of the respects in which such registration statement or report appears to be materially incomplete or misleading, as the case may be, and shall fix a date (in no event earlier than thirty days after the mailing of such notice) prior to which such company may file such registration statement or report or correct the same. If such registration statement or report is not filed or corrected within the time so fixed by the Commission or any extension thereof, the Commission, after appropriate notice and opportunity for hearing, and upon such conditions and with such exemptions as it deems appropriate for the protection of investors, may by order suspend the registration of such company until such statement or report is filed or corrected, or may by order revoke such registration, if the evidence establishes—

(1) that such company has failed to file a registration statement required by this section or a report required pursuant to section 80a-29(a) or (b) of this title, or has filed such a registration statement or report but omitted therefrom material facts required to be stated therein, or has filed such a registration statement or report in violation of section 80a-33(b) of this title; and

(2) that such suspension or revocation is in the public interest.

(f) Cessation of existence as investment company

Whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the taking effect of such order the registration of such company shall cease to be in effect. If necessary for the protection of investors, an order under this subsection may be made upon appropriate conditions. The Commission's denial of any application under this subsection shall be by order.

(Aug. 22, 1940, ch. 686, title I, § 8, 54 Stat. 803; June 11, 1960, Pub. L. 86-507, § 1(14), 74 Stat. 201; Dec. 14, 1970, Pub. L. 91-547, § 3(c), 84 Stat. 1415.)

REFERENCES IN TEXT

"This subchapter", referred to in subsec. (a), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

The Securities Act of 1933, referred to in subsecs. (b)(5) and (c)(1), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

The Securities Exchange Act of 1934, referred to in subsecs. (b)(5) and (c)(1), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

Words "such Act", referred to in subsec. (c)(1), mean the Securities Act of 1933 and the Securities Exchange Act of 1934, respectively.

AMENDMENTS

1970—Subsec. (b)(2). Pub. L. 91-547, § 3(c)(1), substituted "all investment policies of the registrant" and "which are changeable only if authorized by shareholder vote" for "the policy of the registrant in respect of matters" and "which the registrant deems matters of fundamental policy and elects to treat as such", respectively. Former provisions are now covered par. (3).

Subsec. (b)(3). Pub. L. 91-547, § 3(c)(3), added par. (3). Former par. (3) redesignated (4).

Subsecs. (b)(4), (5). Pub. L. 91-547, § 3(c)(2), redesignated former pars. (3) and (4) as (4) and (5).

1960—Subsec. (e). Pub. L. 86-507 inserted "or by certified mail" following "registered mail".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Authority of commission as to reports, etc., to be filed or accounting policies, see section 80a-2 of this title.

Effective date, see section 80a-52 of this title.

Stay of Commission's order upon commencement of proceedings, see section 80a-42 of this title.

Unregistered investment companies, transactions by, see sections 80a-7 of this title.

Vote required for change of policy in registration statement, see section 80a-13 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78*l*, 80a-2, 80a-7, 80a-13, 80a-42, 80a-52 of this title.

§ 80a-9. Ineligibility of certain affiliated persons and underwriters

(a) Persons deemed ineligible for service with investment companies, etc.; investment adviser

It shall be unlawful for any of the following persons to serve or act in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company:

(1) any person who within ten years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, or investment adviser, or as an affiliated person, salesman, or employee of any investment company, bank, or insurance company;

(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, or investment adviser, or as an affiliated person, salesman, or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or

(3) a company any affiliated person of which is ineligible, by reason of paragraph (1) or (2) of this subsection, to serve or act in the foregoing capacities.

For the purposes of paragraphs (1) to (3) of this subsection, the term "investment adviser" shall include an investment adviser as defined in subchapter II of this chapter.

(b) Certain persons serving investment companies; administrative action of Commission

The Commission may, after notice and opportunity for hearing, by order prohibit, conditionally or unconditionally, either permanently or for such period of time as it in its discretion shall deem appropriate in the public interest, any person from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, if such person—

(1) has willfully made or caused to be made in any registration statement, application or report filed with the Commission under this subchapter any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such registration statement, application, or report any material fact which was required to be stated therein; or

(2) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], or of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or of subchapter II of this chapter, or of this subchapter, or of any rule or regulation under any of such statutes; or

(3) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of the Securities Act of 1933 [15 U.S.C. 77a et seq.], or of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or of subchapter II of this chapter, or of this subchapter, or of any rule or regulation under any of such statutes.

(c) Application of ineligible person for exemption

Any person who is ineligible, by reason of subsection (a) of this section, to serve or act in the capacities enumerated in such subsection, may file with the Commission an application for an exemption from the provisions of such subsection. The Commission shall by order grant such application, either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of such subsection (a) as applied to such person, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

(d) Corporate or other trustees performing functions of investment advisers

For the purposes of subsection (a) through (c) of this section, the term "investment adviser" includes a corporate or other trustee performing the functions of an investment adviser.

(Aug. 22, 1940, ch. 686, title I, § 9, 54 Stat. 805; Dec. 14, 1970, Pub. L. 91-547, § 4, 84 Stat. 1415; June 4, 1975, Pub. L. 94-29, § 28(6), 89 Stat. 166.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (b)(1), (2), and (3), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

The Securities Act of 1933, referred to in subsecs. (b)(2), (3), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

The Securities Exchange Act of 1934, referred to in subsecs. (b)(2), (3), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

AMENDMENTS

1975—Subsec. (d). Pub. L. 94-29 added subsec. (d).

1970—Subsec. (a). Pub. L. 91-547, § 4(a), inserted in introductory text "employee," preceding "officer".

Subsec. (b). Pub. L. 91-547, 4(b), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec (c). Pub. L. 91-547, § 4(b), redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a-35 of this title; title 29 section 1111.

§ 80a-10. Affiliations or interest of directors, officers, and employees

(a) Interested persons of company who may serve on board of directors

No registered investment company shall have a board of directors more than 60 per centum of the members of which are persons who are interested persons of such registered company.

(b) Employment and use of directors, officers, etc., as regular broker, principal underwriter, or investment banker

No registered investment company shall—

(1) employ as regular broker any director, officer, or employee of such registered company, or any person of which any such director, officer, or employee is an affiliated person, unless a majority of the board of directors of such registered company shall be persons who are not such brokers or affiliated persons of any of such brokers;

(2) use as a principal underwriter of securities issued by it any director, officer, or employee of such registered company or any person of which any such director, officer, or employee is an interested person, unless a majority of the board of directors of such registered company shall be persons who are not such principal underwriters or interested persons of any of such principal underwriters; or

(3) have as director, officer, or employee any investment banker, or any affiliated person of an investment banker, unless a majority of the board of directors of such registered company shall be persons who are not investment bankers or affiliated persons of any investment banker. For the purposes of this paragraph, a person shall not be deemed an affiliated person of an investment banker solely by reason of the fact that he is an affiliated person of a company of the character described in section 80a-12(d)(3)(A) and (B) of this title.

(c) Officers, directors, or employees of one bank as majority of board of directors of company; exceptions

No registered investment company shall have a majority of its board of directors consisting of persons who are officers, directors, or employees of any one bank, except that, if on March 15, 1940, any registered investment company had a majority of its directors consisting of persons who are directors, officers, or employees of any one bank, such company may continue to have the same percentage of its board of directors consisting of persons who are directors, officers, or employees of such bank.

(d) Exception to limitation of number of interested persons who may serve on board of directors

Notwithstanding subsections (a) and (b)(2) of this section, a registered investment company may have a board of directors all the members of which, except one, are interested persons of the investment adviser of such company, or are officers or employees of such company, if—

(1) such investment company is an open-end company;

(2) such investment adviser is registered under subchapter II of this chapter and is engaged principally in the business of rendering investment supervisory services as defined in subchapter II;

(3) no sales load is charged on securities issued by such investment company;

(4) any premium over net asset value charged by such company upon the issuance of any such security, plus any discount from net asset value charged on redemption thereof, shall not in the aggregate exceed 2 per centum;

(5) no sales or promotion expenses are incurred by such registered company; but expenses incurred in complying with laws regulating the issue or sale of securities shall not be deemed sales or promotion expenses;

(6) such investment adviser is the only investment adviser to such investment company, and such investment adviser does not receive a management fee exceeding 1 per centum per annum of the value of such company's net assets averaged over the year or taken as of a definite date or dates within the year;

(7) all executive salaries and executive expenses and office rent of such investment company are paid by such investment adviser; and

(8) such investment company has only one class of securities outstanding, each unit of which has equal voting rights with every other unit.

(e) Death, disqualification, or resignation of directors as suspension of limitation provisions

If by reason of the death, disqualification, or bona fide resignation of any director or directors, the requirements of the foregoing provisions of this section or of section 80a-15(f)(1) of this title in respect of directors shall not be met by a registered investment company, the operation of such provision shall be suspended as to such registered company—

(1) for a period of thirty days if the vacancy or vacancies may be filled by action of the board of directors;

(2) for a period of sixty days if a vote of stockholders is required to fill the vacancy or vacancies; or

(3) for such longer period as the Commission may prescribe, by rules and regulations upon its own motion or by order upon application, as not inconsistent with the protection of investors.

(f) Officer, director, etc., of company acting as principal underwriter of security acquired by company

No registered investment company shall knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security (except a security of which such company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of such registered company, or is a person (other than a company of the character described in section 80a-12(d)(3)(A) and (B) of this title) of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person, unless in acquiring such security such registered company is itself acting as a principal underwriter for the issuer. The Commission, by rules and regulations upon its own motion or by order upon application, may conditionally or unconditionally exempt any transaction or classes of transactions from any of the provisions of this subsection, if and to the extent that such exemption is consistent with the protection of investors.

(g) Advisory boards; restrictions on membership

In the case of a registered investment company which has an advisory board, such board, as a distinct entity, shall be subject to the same restrictions as to its membership as are imposed upon a board of directors by this section.

(h) Application of section to unincorporated registered management companies

In the case of a registered management company which is an unincorporated company not having a board of directors, the provisions of this section shall apply as follows:

(1) the provisions of subsection (a) of this section, as modified by subsection (e) of this section, shall apply to the board of directors of the depositor of such company;

(2) the provisions of subsections (b) and (c) of this section, as modified by subsection (e) of this section, shall apply to the board of directors of the depositor and of every investment adviser of such company; and

(3) the provisions of subsection (f) of this section shall apply to purchases and other acquisitions for the account of such company of securities a principal underwriter of which is the depositor or an investment adviser of such company, or an affiliated person of such depositor or investment adviser.

(Aug. 22, 1940, ch. 686, title I, § 10, 54 Stat. 806; Dec. 14, 1970, Pub. L. 91-547, § 5, 84 Stat. 1416; June 4, 1975, Pub. L. 94-29, § 28(5), 89 Stat. 165.)

AMENDMENTS

1975—Subsec. (e). Pub. L. 94-29 added reference to the provisions of section 80a-15(f)(1) of this title.

1970—Subsec. (a). Pub. L. 91-547, § 5(a), deleted introductory phrase "After one year from the effective date of this subchapter" and substituted "interested persons of such registered company" for "investment advisers of, affiliated persons of an investment adviser of, or officers or employees of, such registered company".

Subsec. (b). Pub. L. 91-547, § 5(b)(1), deleted introductory text "After one year from the effective date of this subchapter," and substituted "No" for "no".

Subsec. (b)(2). Pub. L. 91-547, § 5(b)(2), substituted "interested" for "affiliated" in two instances.

Subsec. (c). Pub. L. 91-547, § 5(c), deleted introductory text "After the effective date of this subchapter", substituted "No", ", except that", "had a majority", and "such company" for "no", ": Provided, That", "shall have had a majority", and "such company", and inserted reference to employees where first appearing.

Subsec. (d). Pub. L. 91-547, § 5(d), reenacted the provisions except for substitution of "interested persons" for "affiliated persons" in the introductory text, deletion of "such investment adviser" preceding "is engaged" in item (2), and substitution of "class of securities" for "class of stock" and "unit" for "share" in two instances in item (8).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendments to subsecs. (a) to (d) of this section by Pub. L. 91-547, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Unlawful distribution of securities by open-end companies, exempt companies, see section 80a-12 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a-12 of this title.

§ 80a-11. Offers to exchange securities

(a) Approval by Commission for exchanges of securities on basis other than relative net asset value

It shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers which are in effect at the time such offer is made. For the purposes of this section, (A) an offer by a principal underwriter means an offer communicated to holders of securities of a class or series but does not include an offer made by such principal underwriter to an individual investor in the course of a retail business conducted by such principal underwriter, and (B) the net asset value means the net asset value which is in effect for the purpose of determining the price at which the securities, or class or series of securities involved, are offered for sale to the public either (1) at the time of the receipt by the offeror of the acceptance of the offer or (2) at such later times as is specified in the offer.

(b) Application of section to offers pursuant to plan of reorganization.

The provisions of this section shall not apply to any offer made pursuant to any plan of reorganization, which is submitted to and requires the approval of the holders of at least a majority of the outstanding shares of the class or series to which the security owned by the offeree belongs.

(c) Application of section to specific exchange offers

The provisions of subsection (a) of this section shall be applicable, irrespective of the basis of exchange, (1) to any offer of exchange of any security of a registered open-end company for a security of a registered unit investment trust or registered face-amount certificate company; and (2) to any type of offer of exchange of the securities of registered unit investment trusts or registered face-amount certificate companies for the securities of any other investment company.

(Aug. 22, 1940, ch. 686, title I, § 11, 54 Stat. 808; Dec. 14, 1970, Pub. L. 91-547, § 6, 84 Stat. 1417.)

AMENDMENTS

1970—Subsec. (b). Pub. L. 91-547 deleted item (1) designation of existing provisions and item (2) provision for nonapplication of this section to any offer made pursuant to the right of conversion, at the option of the holder, from one class or series into another class or series of securities issued by the same company upon such terms as are specified in the charter, certificate of incorporation, articles of association, by-laws, or trust indenture subject to which the securities to be converted were issued or are to be issued.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Sales pursuant to offer of exchange, see section 80a-22 of this title.

Unlawful acquisition of other investment company securities, dividends as exempt, see section 80a-12 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a-12, 80a-22 of this title.

§ 80a-12. Functions and activities of investment companies

(a) Purchase of securities on margin; joint trading accounts; short sales of securities; exceptions

It shall be unlawful for any registered investment company, in contravention of such rules and regulations or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors—

(1) to purchase any security on margin, except such short-term credits as are necessary for the clearance of transactions;

(2) to participate on a joint or a joint and several basis in any trading account in securities, except in connection with an underwriting in which such registered company is a participant; or

(3) to effect a short sale of any security, except in connection with an underwriting in which such registered company is a participant.

(b) Distribution by investment company of securities of which it is issuer

It shall be unlawful for any registered open-end company (other than a company complying with the provisions of section 80a-10(d) of this title) to act as a distributor of securities of which it is the issuer, except through an underwriter, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(c) Limitations on commitments as underwriter

It shall be unlawful for any registered diversified company to make any commitment as underwriter, if immediately thereafter the amount of its outstanding underwriting commitments, plus the value of its investments in securities of issuers (other than investment companies) of which it owns more than 10 per centum of the outstanding voting securities, exceeds 25 per centum of the value of its total assets.

(d) Limitations on acquisition by investment companies of securities of other specific businesses

(1)(A) It shall be unlawful for any registered investment company (the "acquiring company") and any company or companies controlled by such acquiring company to purchase or otherwise acquire any security issued by any other investment company (the "acquired company"), and for any investment company (the "acquiring company") and any company or companies controlled by such acquiring company to purchase or otherwise acquire any security issued by any registered investment company (the "acquired company"), if the acquiring company and any company or companies controlled by it immediately after such purchase or acquisition own in the aggregate—

(i) more than 3 per centum of the total outstanding voting stock of the acquired company;

(ii) securities issued by the acquired company having an aggregate value in excess of 5 per centum of the value of the total assets of the acquiring company; or

(iii) securities issued by the acquired company and all other investment companies (other than Treasury stock of the acquiring company) having an aggregate value in excess of 10 per centum of the value of the total assets of the acquiring company.

(B) It shall be unlawful for any registered open-end investment company (the "acquired company"), any principal underwriter therefor, or any broker or dealer registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], knowingly to sell or otherwise dispose of any security issued by the acquired company to any other investment company (the "acquiring company") or any company or companies controlled by the acquiring company, if immediately after such sale or disposition—

(i) more than 3 per centum of the total outstanding voting stock of the acquired company is owned by the acquiring company and any company or companies controlled by it; or

(ii) more than 10 per centum of the total outstanding voting stock of the acquired company is owned by the acquiring company and other investment companies and companies controlled by them.

(C) It shall be unlawful for any investment company (the "acquiring company") and any company or companies controlled by the acquiring company to purchase or otherwise acquire any security issued by a registered closed-end investment company, if immediately after such purchase or acquisition the acquiring company, other investment companies having the same investment adviser, and companies controlled by such investment companies, own more than 10 per centum of the total outstanding voting stock of such closed-end company.

(D) The provisions of this paragraph (1) shall not apply to a security received as a dividend or as a result of an offer of exchange approved pursuant to section 80a-11 of this title or of a plan of reorganization of any company (other than a plan devised for the purpose of evading the foregoing provisions).

(E) The provisions of this paragraph (1) shall not apply to a security (or securities) purchased or acquired by an investment company if—

(i) the depositor of, or principal underwriter for, such investment company is a broker or dealer registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or a person controlled by such a broker or dealer;

(ii) such security is the only investment security held by such investment company (or such securities are the only investment securities held by such investment company, if such investment company is a registered unit investment trust that issues two or more classes or series of securities, each of which provides for the accumulation of shares of a different investment company); and

(iii) in the event such investment company is not a registered investment company, the purchase or acquisition is made pursuant to an arrangement with the issuer of, or principal underwriter for the issuer of, the security whereby such investment company is obligated—

(aa) either to seek instructions from its security holders with regard to the voting of all proxies with respect to such security and to vote such proxies only in accordance with such instructions, or to vote the shares held by it in the same proportion as the vote of all other holders of such security, and

(bb) to refrain substituting such security unless the Commission shall have approved such substitution in the manner provided in section 80a-26 of this title.

(F) The provisions of this paragraph (1) shall not apply to securities purchased or otherwise acquired by a registered investment company if—

(i) immediately after such purchase or acquisition not more than 3 per centum of the total outstanding stock of such issuer is owned by such registered investment company and all affiliated persons of such registered investment company; and

(ii) such registered investment company has not offered or sold after January 1, 1971, and is not proposing to offer or sell any security issued by it through a principal underwriter or otherwise at a public offering price which includes a sales load of more than 1½ per centum.

No issuer of any security purchased or acquired by a registered investment company pursuant to this subparagraph shall be obligated to redeem such security in an amount exceeding 1 per centum of such issuer's total outstanding securities during any period of less than thirty days. Such investment company shall exercise voting rights by proxy or otherwise with respect to any security purchased or acquired pursuant to this subparagraph in the manner prescribed by subparagraph (E) of this subsection.

(G) For the purposes of this paragraph (1), the value of an investment company's total assets shall be computed as of the time of a purchase or acquisition or as closely thereto as it[1] reasonably possible.

(H) In any action brought to enforce the provisions of this paragraph (1), the Commission may join as a party the issuer of any security purchased or otherwise acquired in violation of this paragraph (1), and the court may issue any order with respect to such issuer as may be necessary or appropriate for the enforcement of the provisions of this paragraph (1).

(2) It shall be unlawful for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire any security (except a security received as a dividend or as a result of a plan of reorganization of any company, other than a plan devised for the purpose of evading the provisions of this paragraph) issued by any insurance company of which such registered investment company and any company or companies controlled by such registered company do not, at the time of such purchase or acquisition, own in the aggregate at least 25 per centum of the total outstanding voting stock, if such registered company and any company or companies controlled by it own in the aggregate, or as a result of such purchase or acquisition will own in the aggregate, more than 10 per centum of the total outstanding voting stock of such insurance company.

(3) It shall be unlawful for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire any security issued by or any other interest in the business of any person who is a broker, a dealer, is engaged in the business of underwriting, or is either an investment adviser of an investment company or an investment adviser registered under subchapter II of this chapter, unless (A) such person is a corporation all the outstanding securities of which (other than short-term paper, securities representing bank loans, and directors' qualifying shares) are, or after such acquisition will be, owned by one or more registered investment companies; and (B) such person is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, or any one or more of such or related activities, and the gross income of such person normally is derived principally from such business or related activities.

(e) Acquisition of securities issued by corporations in business of underwriting, furnishing capital to industry, etc.

Notwithstanding any provisions of this subchapter, any registered investment company may hereafter purchase or otherwise acquire any security issued by any one corporation engaged or proposing to engage in the business of underwriting, furnishing capital to industry, financing promotional enterprises, purchasing securities of issuers for which no ready market is in existence, and reorganizing companies or similar activities; provided—

(1) That the securities issued by such corporation (other than short-term paper and securities representing bank loans) shall consist solely of one class of common stock and shall have been originally issued or sold for invest-

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[1] So in original, probably should be "is".

ment to registered investment companies only;

(2) That the aggregate cost of the securities of such corporation purchased by such registered investment company does not exceed 5 per centum of the value of the total assets of such registered company at the time of any purchase or acquisition of such securities; and

(3) That the aggregate paid-in capital and surplus of such corporation does not exceed $100,000,000.

For the purpose of paragraph (1) of section 80a-5(b) of this title any investment in any such corporation shall be deemed to be an investment in an investment company.

(f) Organization and ownership by one registered face-amount certificate company of all or part of capital stock of not more than two other face-amount certificate companies; limitations

Notwithstanding any provisions of this chapter, any registered face-amount certificate company may organize not more than two face-amount certificate companies and acquire and own all or any part of the capital stock only thereof if such stock is acquired and held for investment: *Provided,* That the aggregate cost to such registered company of all such stock so acquired shall not exceed six times the amount of the minimum capital stock requirement provided in subdivision (1) of subsection (a) of section 80a-28 of this title for a face-amount company organized on or after March 15, 1940: *And provided further,* That the aggregate cost to such registered company of all such capital stock issued by face-amount certificate companies organized or otherwise created under laws other than the laws of the United States or any State thereof shall not exceed twice the amount of the minimum capital stock requirement provided in subdivision (1) of subsection (a) of said section 80a-28 for a company organized on or after March 15, 1940. Nothing contained in this subsection shall be deemed to prevent the sale of any such stock to any other person if the original purchase was made by such registered face-amount certificate company in good faith for investment and not for resale.

(g) Exceptions to limitation on ownership by investment company of securities of insurance company

Notwithstanding the provisions of this section any registered investment company and any company or companies controlled by such registered company may purchase or otherwise acquire from another investment company or any company or companies controlled by such registered company more than 10 per centum of the total outstanding voting stock of any insurance company owned by any such company or companies, or may acquire the securities of any insurance company if the Commission by order determines that such acquisition is in the public interest because the financial condition of such insurance company will be improved as a result of such acquisition or any plan contemplated as a result thereof. This section shall not be deemed to prohibit the promotion of a new insurance company or the acquisition of the securities of any newly created insurance company by a registered investment company, alone or with other persons. Nothing contained in this section shall in any way affect or derogate from the powers of any insurance commissioner or similar official or agency of the United States or any State, or to affect the right under State law of any insurance company to acquire securities of any other insurance company or insurance companies.

(Aug. 22, 1940, ch. 686, title I, § 12, 54 Stat. 808; Dec. 14, 1970, Pub. L. 91-547, § 7, 84 Stat. 1417.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (d)(1)(B), (E)(i), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

"This subchapter", referred to in subsec. (e), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

"This chapter", referred to in subsec. (f), in the original read "this Act", meaning titles I to III of act Aug. 22, 1940, which are principally classified to this chapter. Section 29 of title I of act Aug. 22, 1940, amended sections 72(a) and 107(f) of Title 11, Bankruptcy, and title III of act Aug. 22, 1940, amended section 77h(a) of this title.

AMENDMENTS

1970—Subsec. (d)(1). Pub. L. 91-547 substituted provisions designated as subpars. (A) to (C) and (E) to (H) for former introductory provisions reading "It shall be unlawful for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire after August 22, 1940, any security isused by or any other interest in the business of—" and subpar. (1) reading "any other investment company of which such registered investment company and company or companies controlled by such registered company shall not at the time of such purchase or acquisition own in the aggregate at least 25 per centum of the total outstanding voting stock, if such registered investment company and any company or companies controlled by it own in the aggregate or as a result of such purchase or acquisition will own in the aggregate more than 5 per centum of the total outstanding voting stock of such other investment company if the policy of such other investment company is the concentration of investments in a particular industry or group of industries, or more than 3 per centum of the total outstanding voting stock of such other investment company if the policy of such other investment company is not the concentration of investments in a particular industry or group of industries, except and cl. (B) exception reading "a security purchased with the proceeds of payments on periodic payment plan certificates, pursuant to the terms of the trust indenture under which such certificates are issued", cl. (A) of such subpar. (1) being incorporated in subpar. (D) of this par. (1).

Subsec. (d)(2). Pub. L. 91-547 incorporated existing introductory text and subpar. (2) provisions in provisions redesignated as par. (2) and deleted "after August 22, 1940," following "purchase or otherwise acquire".

Subsec. (d)(3). Pub. L. 91-547 incorporated existing introductory text and subpar. (3) provisions in provisions redesignated as par. (3) and deleted "after August 22, 1940," following "purchase or otherwise acquire".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Sale of redeemable security by registered investment company, see section 80a-22 of this title.

Unlawful transactions for registered investment companies, see section 80a-17 of this title.

Value as to assets of registered investment companies, definition of, see section 80a-2 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a-2, 80a-10, 80a-17, 80a-22 of this title.

§ 80a-13. Changes in investment policy

(a) No registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities—

(1) change its subclassification as defined in section 80a-5(a)(1) and (2) of this title or its subclassification from a diversified to a nondiversified company;

(2) borrow money, issue senior securities, underwrite securities issued by other persons, purchase or sell real estate or commodities or make loans to other persons, except in each case in accordance with the recitals of policy contained in its registration statement in respect thereto;

(3) deviate from its policy in respect of concentration of investments in any particular industry or group of industries as recited in its registration statement, deviate from any investment policy which is changeable only if authorized by shareholder vote, or deviate from any policy recited in its registration statement pursuant to section 80a-8(b)(3) of this title; or

(4) change the nature of its business so as to cease to be an investment company.

(b) In the case of a common-law trust of the character described in section 80a-16(c) of this title, either written approval by holders of a majority of the outstanding shares of beneficial interest or the vote of a majority of such outstanding shares cast in person or by proxy at a meeting called for the purpose shall for the purposes of subsection (a) of this section be deemed the equivalent of the vote of a majority of the outstanding voting securities, and the provisions of paragraph (42) of section 80a-2(a) of this title as to a majority shall be applicable to the vote cast at such a meeting.

(Aug. 22, 1940, ch. 686, title I, § 13, 54 Stat. 811; Dec. 14, 1970, Pub. L. 91-547, §§ 2(b), 3(d), 84 Stat. 1414, 1415; June 4, 1975, Pub. L. 94-29, § 28(4), 89 Stat. 165.)

AMENDMENTS

1975—Subsec. (b). Pub. L. 94-29 substituted "section 80a-16(c) of this title" for "subsection (b) of section 80a-16 of this title".

1970—Subsec. (a)(3). Pub. L. 91-547, § 3(d), prohibited deviation from any investment policy which is changeable only if authorized by shareholder vote, substituted "section 8(b)(3)" for "section 8(b)(2)", and in the latter deviation provision deleted "fundamental" preceding "policy".

Subsec. (b). Pub. L. 91-547, § 2(b), substituted reference to "paragraph (42)" for "paragraph (40)".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

CROSS REFERENCES

Approval of reorganization plan affecting senior securities or action requiring vote of security holders, see section 80a-18 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a-18 of this title.

§ 80a-14. Size of investment companies

(a) No registered investment company organized after August 22, 1940, and no principal underwriter for such a company, shall make a public offering of securities of which such company is the issuer, unless—

(1) such company has a net worth of at least $100,000;

(2) such company has previously made a public offering of its securities, and at the time of such offering had a net worth of at least $100,000; or

(3) provision is made in connection with and as a condition of the registration of such securities under the Securities Act of 1933 [15 U.S.C. 77a et seq.] which in the opinion of the Commission adequately insures (A) that after the effective date of such registration statement such company will not issue any security or receive any proceeds of any subscription for any security until firm agreements have been made with such company by not more than twenty-five responsible persons to purchase from it securities to be issued by it for an aggregate net amount which plus the then net worth of the company, if any, will equal at least $100,000; (B) that said aggregate net amount will be paid in to such company before any subscriptions for such securities will be accepted from any persons in excess of twenty-five; (C) that arrangements will be made whereby any proceeds so paid in, as well as any sales load, will be refunded to any subscriber on demand without any deduction, in the event that the net proceeds so received by the company do not result in the company having a net worth of at least $100,000 within ninety days after such registration statement becomes effective.

At any time after the occurrence of the event specified in clause (C) of paragraph (3) of this subsection the Commission may issue a stop order suspending the effectiveness of the registration statement of such securities under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and may suspend or revoke the registration of such company under this subchapter.

(b) The Commission is authorized, at such times as it deems that any substantial further increase in size of investment companies creates any problem involving the protection of investors or the public interest, to make a study and investigation of the effects of size on the investment policy of investment companies and on security markets, on concentration of control of wealth and industry, and on companies in which investment companies are interested, and from time to time to report the results of its studies and investigations and its recommendations to the Congress.

(Aug. 22, 1940, ch. 686, title I, § 14, 54 Stat. 811.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (a), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

"This subchapter", referred to in subsec. (a), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80a-15. Contracts of advisers and underwriters

(a) Written contract to serve or act as investment adviser; contents

It shall be unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company, and—

(1) precisely describes all compensation to be paid thereunder;

(2) shall continue in effect for a period more than two years from the date of its execution, only so long as such continuance is specifically approved at least annually by the board of directors or by vote of a majority of the outstanding voting securities of such company;

(3) provides, in substance, that it may be terminated at any time, without the payment of any penalty, by the board of directors of such registered company or by vote of a majority of the outstanding voting securities of such company on not more than sixty days' written notice to the investment adviser; and

(4) provides, in substance, for its automatic termination in the event of its assignment.

(b) Written contract with company for sale by principal underwriter of security of which company is issuer; contents

It shall be unlawful for any principal underwriter for a registered open-end company to offer for sale, sell, or deliver after sale any security of which such company is the issuer, except pursuant to a written contract with such company, which contract—

(1) shall continue in effect for a period more than two years from the date of its execution, only so long as such continuance is specifically approved at least annually by the board of directors or by vote of a majority of the outstanding voting securities of such company; and

(2) provides, in substance, for its automatic termination in the event of its assignment.

(c) Approval of contract to undertake service as investment adviser or principal underwriter by majority of noninterested directors

In addition to the requirements of subsections (a) and (b) of this section, it shall be unlawful for any registered investment company having a board of directors to enter into, renew, or perform any contract or agreement, written or oral, whereby a person undertakes regularly to serve or act as investment adviser of or principal underwriter for such company, unless the terms of such contract or agreement and any renewal thereof have been approved by the vote of a majority of directors, who are not parties to such contract or agreement or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval. It shall be the duty of the directors of a registered investment company to request and evaluate, and the duty of an investment adviser to such company to furnish, such information as may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company. It shall be unlawful for the directors of a registered investment company, in connection with their evaluation of the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company, to take into account the purchase price or other consideration any person may have paid in connection with a transaction of the type referred to in paragraph (1), (3), or (4) of subsection (f) of this section.

(d) Equivalent of vote of majority of outstanding voting securities in case of common-law trust

In the case of a common-law trust of the character described in section 80a-16(c) of this title, either written approval by holders of a majority of the outstanding shares of beneficial interest or the vote of a majority of such outstanding shares cast in person or by proxy at a meeting called for the purpose shall for the purposes of this section be deemed the equivalent of the vote of a majority of the outstanding voting securities, and the provisions of paragraph (40) of section 80a-2(a) of this title as to a majority shall be applicable to the vote cast at such a meeting.

(e) Exemption of advisory boards or members from provisions of this section

Nothing contained in this section shall be deemed to require or contemplate any action by an advisory board of any registered company or by any of the members of such a board.

(f) Receipt of benefits by investment adviser from sale of securities or other interest in such investment adviser resulting in assignment of investment advisory contract

(1) An investment adviser, or a corporate trustee performing the functions of an investment adviser, of a registered investment company or an affiliated person of such investment adviser or corporate trustee may receive any amount or benefit in connection with a sale of

securities of, or a sale of any other interest in, such investment adviser or corporate trustee which results in an assignment of an investment advisory contract with such company or the change in control of or identity of such corporate trustee, if—

(A) for a period of three years after the time of such action, at least 75 per centum of the members of the board of directors of such registered company or such corporate trustee (or successor thereto, by reorganization or otherwise) are not (i) interested persons of the investment adviser of such company or such corporate trustee, or (ii) interested persons of the predecessor investment adviser or such corporate trustee; and

(B) there is not imposed an unfair burden on such company as a result of such transaction or any express or implied terms, conditions, or understandings applicable thereto.

(2)(A) For the purpose of paragraph (1)(A) of this subsection, interested persons of a corporate trustee shall be determined in accordance with section 80a-2(a)(19)(B) of this title: *Provided,* That no person shall be deemed to be an interested person of a corporate trustee solely by reason of (i) his being a member of its board of directors or advisory board or (ii) his membership in the immediate family of any person specified in clause (i) of this subparagraph.

(B) For the purpose of paragraph (1)(B) of this subsection, an unfair burden on a registered investment company includes any arrangement, during the two-year period after the date on which any such transaction occurs, whereby the investment adviser or corporate trustee or predecessor or successor investment advisers or corporate trustee or any interested person of any such adviser or any such corporate trustee receives or is entitled to receive any compensation directly or indirectly (i) from any person in connection with the purchase or sale of securities or other property to, from, or on behalf of such company, other than bona fide ordinary compensation as principal underwriter for such company, or (ii) from such company or its security holders for other than bona fide investment advisory or other services.

(3) If—

(A) an assignment of an investment advisory contract with a registered investment company results in a successor investment adviser to such company, or if there is a change in control of or identity of a corporate trustee of a registered investment company, and such adviser or trustee is then an investment adviser or corporate trustee with respect to other assets substantially greater in amount than the amount of assets of such company, or

(B) as a result of a merger of, or a sale of substantially all the assets by, a registered investment company with or to another registered investment company with assets substantially greater in amount, a transaction occurs which would be subject to paragraph (1)(A) of this subsection.[1]

such discrepancy in size of assets shall be considered by the Commission in determining whether or to what extent an application under section 80a-6(c) of this title for exemption from the provisions of paragraph (1)(A) of this subsection should be granted.

(4) Paragraph (1)(A) of this subsection shall not apply to a transaction in which a controlling block of outstanding voting securities of an investment adviser to a registered investment company or of a corporate trustee performing the functions of an investment adviser to a registered investment company is—

(A) distributed to the public and in which there is, in fact, no change in the identity of the persons who control such investment adviser or corporate trustee, or

(B) transferred to the investment adviser or the corporate trustee, or an affiliated person or persons of such investment adviser or corporate trustee, or is transferred from the investment adviser or corporate trustee to an affiliated person or persons of the investment adviser or corporate trustee: *Provided,* That (i) each transferee (other than such adviser or trustee) is a natural person and (ii) the transferees (other than such adviser or trustee) owned in the aggregate more than 25 per centum of such voting securities for a period of at least six months prior to such transfer.

(Aug. 22, 1940, ch. 686, title I, § 15, 54 Stat. 812; Dec. 14, 1970, Pub. L. 91-547, § 8, 84 Stat. 1419; June 4, 1975, Pub. L. 94-29, § 28(1), (2), (4), 89 Stat. 164, 165.)

REFERENCES IN TEXT

Paragraph (40) of section 80a-2(a), referred to in subsec. (d), was redesignated "(42)" by section 2(a)(2) of Pub. L. 91-547, Dec. 14, 1970, 84 Stat. 1413, sections 2(b) and 18 of which amended sections 80a-13(b) and 80a-31(a) respectively to reflect the redesignation of para. (40) to "(42)".

AMENDMENTS

1975—Subsec. (c). Pub. L. 94-29, § 28(2), added provisions making it unlawful for the directors of a registered investment company, in connection with their evaluation of the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company, to take into account the purchase price or other consideration any person may have paid in connection with a transaction of the type referred to in paragraph (1), (3), or (4) of subsec. (f).

Subsec. (d). Pub. L. 94-29, § 28(4), substituted "section 80a-16(c) of this title" for "subsection (b) of section 80a-16 of this title".

Subsec. (f). Pub. L. 94-29, § 28(1), added subsec. (f).

1970—Subsec. (a). Pub. L. 91-547, § 8(a), deleted introductory phrase "After one year from the effective date of this subchapter" and "unless in effect prior to March 15, 1940," preceding "has been approved", and "by the investment adviser" following "assignment" in item (4), and substituted "It" for "it".

Subsec. (b). Pub. L. 91-547, § 8(b), deleted introductory phrase "After one year from the effective date of this subchapter," and concluding phrase ", unless in effect prior to March 15, 1940" following "which contract" preceding item (1), deleted "by such underwriter" following "assignment" in item (2), and substituted "It" for "it".

Subsec. (c). Pub. L. 91-547, § 8(c), made it the duty of the directors of a registered investment company to request and evaluate, and the duty of an investment adviser to such company to furnish, such information as may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company, substituted "interested persons" for "affiliated persons", and deleted "except a written agreement which was in effect prior to March 15, 1940," following

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[1] So in original, probably should be a comma.

"written or oral,", item (1) designation following "have been approved" and item "or (2) by the vote of a majority of the outstanding voting securities of such company" following "any such party,", and inserted "the vote" in phrase "by the vote of a majority", and provision respecting voting "cast in person at a meeting called for the purpose of voting on such approval".

Subsec. (d). Pub. L. 91-547, § 8(d), redesignated former subsec. (e) as (d) and struck out former subsec. (d) which prohibited any person after March 15, 1945, from acting as investment adviser to, or principal underwriter for, any registered investment company pursuant to a written contract in effect prior to March 15, 1940, unless such contract was renewed prior to March 15, 1945, in such form as to make it comply with subsecs. (a) or (b).

Subsec. (e). Pub. L. 91-547, § 8(d), redesignated former subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 91-547, § 8(d), redesignated former subsec. (f) as (e).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-547, see section 30(1) of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

CROSS REFERENCES

Contracts of investment advisers generally, see section 80b-5 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a-10, 80a-16 of this title.

§ 80a-16. Board of directors

(a) Election of directors

No person shall serve as a director of a registered investment company unless elected to that office by the holders of the outstanding voting securities of such company, at an annual or a special meeting duly called for that purpose; except that vacancies occurring between such meetings may be filled in any otherwise legal manner if immediately after filling any such vacancy at least two-thirds of the directors then holding office shall have been elected to such office by the holders of the outstanding voting securities of the company at such an annual or special meeting. In the event that at any time less than a majority of the directors of such company holding office at that time were so elected by the holders of the outstanding voting securities, the board of directors or proper officer of such company shall forthwith cause to be held as promptly as possible and in any event within sixty days a meeting of such holders for the purpose of electing directors to fill any existing vacancies in the board of directors unless the Commission shall by order extend such period. The foregoing provisions of this subsection shall not apply to members of an advisory board.

Nothing herein shall, however, preclude a registered investment company from dividing its directors into classes if its charter, certificate of incorporation, articles of association, bylaws, trust indenture, or other instrument or the law under which it is organized, so provides and prescribes the tenure of office of the several classes: *Provided,* That no class shall be elected for a shorter period than one year or for a longer period than five years and the term of office of at least one class shall expire each year.

(b) Term vacancies

Any vacancy on the board of directors of a registered investment company which occurs in connection with compliance with section 80a-15(f)(1)(A) of this title and which must be filled by a person who is not an interested person of either party to a transaction subject to section 80a-15(f)(1)(A) of this title shall be filled only by a person (1) who has been selected and proposed for election by a majority of the directors of such company who are not such interested persons, and (2) who has been elected by the holders of the outstanding voting securities of such company, except that in the case of the death, disqualification, or bona fide resignation of a director selected and elected pursuant to clauses (1) and (2) of this subsection (b), the vacancy created thereby may be filled as provided in subsection (a) of this section.

(c) Trustees of common-law trusts

The foregoing provisions of this section shall not apply to a common-law trust existing on August 22, 1940, under an indenture of trust which does not provide for the election of trustees by the shareholders. No natural person shall serve as trustee of such a trust, which is registered as an investment company, after the holders of record of not less than two-thirds of the outstanding shares of beneficial interests in such trust have declared that he be removed from that office either by declaration in writing filed with the custodian of the securities of the trust or by votes cast in person or by proxy at a meeting called for the purpose. Solicitation of such a declaration shall be deemed a solicitation of a proxy within the meaning of section 80a-20(a) of this title.

The trustees of such a trust shall promptly call a meeting of shareholders for the purpose of voting upon the question of removal of any such trustee or trustees when requested in writing so to do by the record holders of not less than 10 per centum of the outstanding shares.

Whenever ten or more shareholders of record who have been such for at least six months preceding the date of application, and who hold in the aggregate either shares having a net asset value of at least $25,000 or at least 1 per centum of the outstanding shares, whichever is less, shall apply to the trustees in writing, stating that they wish to communicate with other shareholders with a view to obtaining signatures to a request for a meeting pursuant to this subsection and accompanied by a form of communication and request which they wish to transmit, the trustees shall within five business days after receipt of such application either—

(1) afford to such applicants access to a list of the names and addresses of all shareholders as recorded on the books of the trust; or

(2) inform such applicants as to the approximate number of shareholders of record, and the approximate cost of mailing to them the proposed communication and form of request.

If the trustees elect to follow the course specified in paragraph (2) of this subsection the trustees, upon the written request of such applicants, accompanied by a tender of the material to be mailed and of the reasonable expenses of mailing, shall, with reasonable promptness, mail such material to all shareholders of record at their addresses as recorded on the books, unless within five business days after such tender the trustees shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement signed by at least a majority of the trustees to the effect that in their opinion either such material contains untrue statements of fact or omits to state facts necessary to make the statements contained therein not misleading, or would be in violation of applicable law, and specifying the basis of such opinion.

After opportunity for hearing upon the objections specified in the written statement so filed, the Commission may, and if demanded by the trustees or by such applicants shall, enter an order either sustaining one or more of such objections or refusing to sustain any of them. If the Commission shall enter an order refusing to sustain any of such objections, or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all objections so sustained have been met, and shall enter an order so declaring, the trustees shall mail copies of such material to all shareholders with reasonable promptness after the entry of such order and the renewal of such tender.

(Aug. 22, 1940, ch. 686, title I, § 16, 54 Stat. 813; June 4, 1975, Pub. L. 94-29, § 28(3), 89 Stat. 165.)

AMENDMENTS

1975—Subsec. (b). Pub. L. 94-29, § 28(3)(C), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 94-29, § 28(3)(A), (B), redesignated former subsec. (b) as (c) and in subsec. (c) as so redesignated substituted "The foregoing provisions of this section" for "The provisions of subsection (a) of this section" in the first sentence.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Certain affiliated persons and underwriters ineligible, see section 80a-9 of this title.

Common law trusts, approval deemed vote of majority of outstanding voting securities, see section 80a-15 of this title.

Ratification of employment of account for common-law trust, see section 80a-31 of this title.

Shares of registered management company as nonvoting, see section 80a-18 of this title.

Written approval deemed equivalent of a vote, see section 80a-13 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a-13, 80a-15, 80a-18, 80a-31 of this title.

§ 80a-17. Transactions of certain affiliated persons and underwriters

(a) Prohibited transactions

It shall be unlawful for any affiliated person or promoter of or principal underwriter for a registered investment company (other than a company of the character described in section 80a-12(d)(3)(A) and (B) of this title), or any affiliated person of such a person, promoter, or principal underwriter, acting as principal—

(1) knowingly to sell any security or other property to such registered company or to any company controlled by such registered company, unless such sale involves solely (A) securities of which the buyer is the issuer, (B) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities, or (C) securities deposited with the trustee of a unit investment trust or periodic payment plan by the depositor thereof;

(2) knowingly to purchase from such registered company, or from any company controlled by such registered company, any security or other property (except securities of which the seller is the issuer); or

(3) to borrow money or other property from such registered company or from any company controlled by such registered company (unless the borrower is controlled by the lender) except as permitted in section 80a-21(b) of this title.

(b) Application for exemption of proposed transaction from certain restrictions

Notwithstanding subsection (a) of this section, any person may file with the Commission an application for an order exempting a proposed transaction of the applicant from one or more provisions of said subsection. The Commission shall grant such application and issue such order of exemption if evidence establishes that—

(1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under this subchapter; and

(3) the proposed transaction is consistent with the general purposes of this subchapter.

(c) Sale or purchase of merchandise from any company or furnishing of services incident to lessor-lessee relationship

Notwithstanding subsection (a) of this section, a person may, in the ordinary course of business, sell to or purchase from any company merchandise or may enter into a lessor-lessee relationship with any person and furnish the services incident thereto.

(d) Joint or joint and several participation with company in transactions

It shall be unlawful for any affiliated person of or principal underwriter for a registered investment company (other than a company of the character described in section 80a-12(d)(3)(A) and (B) of this title), or any affiliated person of such a person or principal underwriter, acting as principal to effect any transaction in which such registered company, or a company controlled by such registered company, is a joint or a joint and several participant with such person, principal underwriter, or affiliated person, in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered or controlled company on a basis different from or less advantageous than that of such other participant. Nothing contained in this subsection shall be deemed to preclude any affiliated person from acting as manager of any underwriting syndicate or other group in which such registered or controlled company is a participant and receiving compensation therefor.

(e) Acceptance of compensation, commissions, fees, etc.

It shall be unlawful for any affiliated person of a registered investment company, or any affiliated person of such person—

(1) acting as agent, to accept from any source any compensation (other than a regular salary or wages from such registered company) for the purchase or sale of any property to or for such registered company or any controlled company thereof, except in the course of such person's business as an underwriter or broker; or

(2) acting as broker, in connection with the sale of securities to or by such registered company or any controlled company thereof, to receive from any source a commission, fee, or other remuneration for effecting such transaction which exceeds (A) the usual and customary broker's commission if the sale is effected on a securities exchange, or (B) 2 per centum of the sales price if the sale is effected in connection with a secondary distribution of such securities, or (C) 1 per centum of the purchase or sale price of such securities if the sale is otherwise effected unless the Commission shall, by rules and regulations or order in the public interest and consistent with the protection of investors, permit a larger commission.

(f) Custody and maintenance of securities and investments

Every registered management company shall place and maintain its securities and similar investments in the custody of (1) a bank or banks having the qualifications prescribed in paragraph (1) of section 80a-26(a) of this title for the trustees of unit investment trusts; or (2) a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], subject to such rules and regulations as the Commission may from time to time prescribe for the protection of investors; or (3) such registered company, but only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors. Subject to such rules, regulations, and orders as the Commission may adopt as necessary or appropriate for the protection of investors, a registered management company or any such custodian, with the consent of the registered management company for which it acts as custodian, may deposit all or any part of the securities owned by such registered management company in a system for the central handling of securities established by a national securities exchange or national securities association registered with the Commission under the Securities Exchange Act of 1934, or such other person as may be permitted by the Commission, pursuant to which system all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of such securities. Rules, regulations, and orders of the Commission under this subsection, among other things, may make appropriate provision with respect to such matters as the earmarking, segregation, and hypothecation of such securities and investments, and may provide for or require periodic or other inspections by any or all of the following: Independent public accountants, employees and agents of the Commission, and such other persons as the Commission may designate. No such member which trades in securities for its own account may act as custodian except in accordance with rules and regulations prescribed by the Commission for the protection of investors. If a registered company maintains its securities and similar investments in the custody of a qualified bank or banks, the cash proceeds from the sale of such securities and similar investments and other cash assets of the company shall likewise be kept in the custody of such a bank or banks, or in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors, except that such a registered company may maintain a checking account in a bank or banks having the qualifications prescribed in paragraph (1) of section 80a-26(a) of this title for the trustees of unit investment trusts with the balance of such account or the aggregate balances of such accounts at no time in excess of the amount of the fidelity bond, maintained pursuant to subsection (g) of this section covering the officers or employees authorized to draw on such account or accounts.

(g) Bonding of officers and employees having access to securities or funds

The Commission is authorized to require by rules and regulations or orders for the protection of investors that any officer or employee of a registered management investment company who may singly, or jointly with others, have access to securities or funds of any registered company, either directly or through authority to draw upon such funds or to direct generally the disposition of such securities (unless the officer or employee has such access solely through his position as an officer or employee of a bank) be bonded by a reputable fidelity insurance company against larceny and embezzlement in such reasonable minimum amounts as the Commission may prescribe.

(h) Provisions in charter, by-laws, etc., protecting against liability for willful misfeasance, etc.

After one year from the effective date of this subchapter, neither the charter, certificate of incorporation, articles of association, indenture of trust, nor the by-laws of any registered investment company, nor any other instrument pursuant to which such a company is organized or administered, shall contain any provision which protects or purports to protect any director or officer of such company against any liability to the company or to its security holders to which he would otherwise be subject by reason of willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his office.

In the event that any such instrument does not at the effective date of this chapter comply with the requirements of this subsection and is not amended to comply therewith prior to the expiration of said one year, such company may nevertheless continue to be a registered investment company and shall not be deemed to violate this subsection if prior to said expiration date each such director or officer shall have filed with the Commission a waiver in writing of any protective provision of the instrument to the extent that it does not comply with this subsection, and each such person subsequently elected or appointed shall before assuming office file a similar waiver.

(i) Provisions in contracts protecting against willful misfeasance, etc.

After one year from the effective date of this subchapter no contract or agreement under which any person undertakes to act as investment adviser of, or principal underwriter for, a registered investment company shall contain any provision which protects or purports to protect such person against any liability to such company or its security holders to which he would otherwise be subject by reason of willful misfeasance, bad faith, or gross negligence, in the performance of his duties, or by reason of his reckless disregard of his obligations and duties under such contract or agreement.

In the event that any such contract or agreement does not at the effective date of this chapter comply with the requirements of this subsection and is not amended to comply therewith prior to the expiration of said one year, this subsection shall not be deemed to have been violated if prior to said expiration date each such investment adviser or principal underwriter shall have filed with the Commission a waiver in writing of any protective provision of the contract or agreement to the extent that it does not comply with this subsection.

(j) Rules and regulations prohibiting fraudulent, deceptive or manipulative courses of conduct

It shall be unlawful for any affiliated person of or principal underwriter for a registered investment company or any affiliated person of an investment adviser of or principal underwriter for a registered investment company, to engage in any act, practice, or course of business in connection with the purchase or sale, directly or indirectly, by such person of any security held or to be acquired by such registered investment company in contravention of such rules and regulations as the Commission may adopt to define, and prescribe means reasonably necessary to prevent, such acts, practices, or courses of business as are fraudulent, deceptive or manipulative. Such rules and regulations may include requirements for the adoption of codes of ethics by registered investment companies and investment advisers of, and principal underwriters for, such investment companies establishing such standards as are reasonably necessary to prevent such acts, practices, or courses of business.

(Aug. 22, 1940, ch. 686, title I, § 17, 54 Stat. 815; Dec. 14, 1970, Pub. L. 91-547, § 9, 84 Stat. 1420.)

REFERENCES IN TEXT

"This subchapter", referred to in subsecs. (b)(2) and (3), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

The Securities Exchange Act of 1934, referred to in subsec. (f), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

The effective date of this subchapter, referred to in subsecs. (h) and (i), in the original read "the effective date of this title", meaning title I of act Aug. 22, 1940. For effective date of this subchapter, see section 80a-52 of this title.

The effective date of this chapter, referred to in subsecs. (h) and (i), in the original read "the effective date of this Act", meaning act Aug. 22, 1940, which is classified to this chapter. For effective date of this chapter, see sections 80a-52 and 80b-21 of this title.

AMENDMENTS

1970—Subsec. (f). Pub. L. 91-547, § 9(a), provided in cl. (1) for a registered investment company which is a collective fund maintained by a bank authority to keep its securities and similar investments in the custody of the sponsoring bank, authorized a registered management company or its custodian (with the consent of the management company), subject to the rulemaking power of the Commission, to deposit the securities of the management company in a central certificate depository established by a national securities exchange or a registered national securities association, and provided that if an investment company employs a bank as a custodian for securities and similar investments, then all of its cash assets, shall likewise be held by a bank, subject to direction as to expenditure and disposition by proper company officials, and provided for maintenance of a checking account or accounts in one or more banks in amounts not to exceed the amount of the fidelity bond covering persons authorized to draw on the accounts.

Subsec. (g). Pub. L. 91-547, § 9(b), substituted "officer or employee" for "officer and employee" and inserted parenthetical clause "(unless the officer or employee has such access solely through his position as an officer or employee of a bank)" preceding "be bonded".

Subsec. (j). Pub. L. 91-547, § 9(c), added subsec. (j).

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendments of subsecs. (f) and (g) and enactment of subsec. (j) of this section by Pub. L. 91-547, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a-35 of this title.

§ 80a-18. Capital structure of investment companies

(a) Qualification on issuance of senior securities

It shall be unlawful for any registered closed-end company to issue any class of senior security, or to sell any such security of which it is the issuer, unless—

(1) if such class of senior security represents an indebtedness—

(A) immediately after such issuance or sale, it will have an asset coverage of at least 300 per centum;

(B) provision is made to prohibit the declaration of any dividend (except a dividend payable in stock of the issuer), or the declaration of any other distribution, upon any class of the capital stock of such investment company, or the purchase of any such capital stock, unless, in every such case, such class of senior securities has at the time of the declaration of any such dividend or distribution or at the time of any such purchase an asset coverage of at least 300 per centum after deducting the amount of such dividend, distribution, or purchase price, as the case may be, except that dividends may be declared upon any preferred stock if such senior security representing indebtedness has an asset coverage of at least 200 per centum at the time of declaration thereof after deducting the amount of such dividend; and

(C) provision is made either—

(i) that, if on the last business day of each of twelve consecutive calendar months such class of senior securities shall have an asset coverage of less than 100 per centum, the holders of such securities voting as a class shall be entitled to elect at least a majority of the members of the board of directors of such registered company, such voting right to continue until such class of senior security shall have an asset coverage of 110 per centum or more on the last business day of each of three consecutive calendar months, or

(ii) that, if on the last business day of each of twenty-four consecutive calendar months such class of senior securities shall have an asset coverage of less than 100 per centum, an event of default shall be deemed to have occurred;

(2) if such class of senior security is a stock—

(A) immediately after such issuance or sale it will have an asset coverage of at least 200 per centum;

(B) provision is made to prohibit the declaration of any dividend (except a dividend payable in common stock of the issuer), or the declaration of any other distribution, upon the common stock of such investment company, or the purchase of any such common stock, unless in every such case such class of senior security has at the time of the declaration of any such dividend or distribution or at the time of any such purchase an asset coverage of at least 200 per centum after deducting the amount of such dividend, distribution or purchase price, as the case may be;

(C) provision is made to entitle the holders of such senior securities, voting as a class, to elect at least two directors at all times, and, subject to the prior rights, if any, of the holders of any other class of senior securities outstanding, to elect a majority of the directors if at any time dividends on such class of securities shall be unpaid in an amount equal to two full years' dividends on such securities, and to continue to be so represented until all dividends in arrears shall have been paid or otherwise provided for;

(D) provision is made requiring approval by the vote of a majority of such securities, voting as a class, of any plan of reorganization adversely affecting such securities or of any action requiring a vote of security holders as in section 80a-13(a) of this title provided; and

(E) such class of stock shall have complete priority over any other class as to distribution of assets and payment of dividends, which dividends shall be cumulative.

(b) Asset coverage in respect of senior securities

The asset coverage in respect of a senior security provided for in subsection (a) of this section may be determined on the basis of values calculated as of a time within forty-eight hours (not including Sundays or holidays) next preceding the time of such determination. The time of issue or sale shall, in the case of an offering of such securities to existing stockholders of the issuer, be deemed to be the first date on which such offering is made, and in all other cases shall be deemed to be the time as of which a firm commitment to issue or sell and to take or purchase such securities shall be made.

(c) Prohibitions relating to issuance of senior securities

Notwithstanding the provisions of subsection (a) of this section it shall be unlawful for any registered closed-end investment company to issue or sell any senior security representing indebtedness if immediately thereafter such company will have outstanding more than one class of senior security representing indebtedness, or to issue or sell any senior security which is a stock if immediately thereafter such company will have outstanding more than one class of senior security which is a stock, except that (1) any such class of indebtedness or stock may be issued in one or more series: *Provided,* That no such series shall have a preference or priority over any other series upon the distribution of the assets of such registered closed-end company or in respect of the payment of interest or dividends, and (2) promissory notes or other evidences of indebtedness issued in consideration of any loan, extension, or renewal thereof, made by a bank or other person and privately arranged, and not intended to be publicly distributed, shall not be deemed to be a separate class of senior securities representing indebtedness within the meaning of this subsection.

(d) Warrants and rights to subscription

It shall be unlawful for any registered management company to issue any warrant or right to subscribe to or purchase a security of which such company is the issuer, except in the form of warrants or rights to subscribe expiring not later than one hundred and twenty days after their issuance and issued exclusively and ratably to a class or classes of such company's security holders; except that any warrant may be issued in exchange for outstanding warrants in connection with a plan of reorganization.

(e) Application of section to specific senior securities

The provisions of this section shall not apply to any senior securities issued or sold by any registered closed-end company—

(1) pursuant to any firm contract to purchase or sell entered into prior to March 15, 1940;

(2) for the purpose of refunding through payment, purchase, redemption, retirement, or exchange, any senior security of such registered investment company except that no senior security representing indebtedness shall be so issued or sold for the purpose of refunding any senior security which is a stock; or

(3) pursuant to any plan of reorganization (other than for refunding as referred to in subsection (e)(2) of this section), provided—

(A) that such senior securities are issued or sold for the purpose of substituting or exchanging such senior securities for outstanding senior securities, and if such senior securities represent indebtedness they are issued or sold for the purpose of substituting or exchanging such senior securities for outstanding senior securities representing indebtedness, of any registered investment company which is a party to such plan of reorganization; or

(B) that the total amount of such senior securities so issued or sold pursuant to such plan does not exceed the total amount of senior securities of all the companies which are parties to such plan, and the total amount of senior securities representing indebtedness so issued or sold pursuant to such plan does not exceed the total amount of senior securities representing indebtedness of all such companies, or, alternatively, the total amount of such senior securities so issued or sold pursuant to such plan does not have the effect of increasing the ratio of senior securities representing indebtedness to the securities representing stock or the ratio of senior securities representing stock to securities junior thereto when compared with such ratios as they existed before such reorganization.

(f) Senior securities securing loans from bank; securities not included in "senior security"

(1) It shall be unlawful for any registered open-end company to issue any class of senior security or to sell any senior security of which it is the issuer, except that any such registered company shall be permitted to borrow from any bank: *Provided,* That immediately after any such borrowing there is an asset coverage of at least 300 per centum for all borrowings of such registered company: *And provided further,* That in the event that such asset coverage shall at any time fall below 300 per centum such registered company shall, within three days thereafter (not including Sundays and holidays) or such longer period as the Commission may prescribe by rules and regulations, reduce the amount of its borrowings to an extent that the asset coverage of such borrowings shall be at least 300 per centum.

(2) "Senior security" shall not, in the case of a registered open-end company, include a class or classes or a number of series of preferred or special stock each of which is preferred over all other classes or series in respect of assets specifically allocated to that class or series: *Provided,* That (A) such company has outstanding no class or series of stock which is not so preferred over all other classes or series, or (B) the only other outstanding class of the issuer's stock consists of a common stock upon which no dividend (other than a liquidating dividend) is permitted to be paid and which in the aggregate represents not more than one-half of 1 per centum of the issuer's outstanding voting securities. For the purpose of insuring fair and equitable treatment of the holders of the outstanding voting securities of each class or series of stock of such company, the Commission may by rule, regulation, or order direct that any matter required to be submitted to the holders of the outstanding voting securities of such company shall not be deemed to have been effectively acted upon unless approved by the holders of such percentage (not exceeding a majority) of the outstanding voting securities of each class or series of stock affected by such matter as shall be prescribed in such rule, regulation, or order.

(g) Definition of "senior security"

Unless otherwise provided: "Senior security" means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends; and "senior security representing indebtedness" means any senior security other than stock.

The term "senior security", when used in subparagraphs (B) and (C) of paragraph (1) of subsection (a) of this section, shall not include any promissory note or other evidence of indebtedness issued in consideration of any loan, extension, or renewal thereof, made by a bank or other person and privately arranged, and not intended to be publicly distributed; nor shall such term, when used in this section, include any such promissory note or other evidence of indebtedness in any case where such a loan is for temporary purposes only and in an amount not exceeding 5 per centum of the value of the total assets of the issuer at the time when the loan is made. A loan shall be presumed to be for temporary purposes if it is repaid within sixty days and is not extended or renewed; otherwise it shall be presumed not to be for temporary purposes. Any such presumption may be rebutted by evidence.

(h) Definition of "asset coverage"

"Asset coverage" of a class of senior security representing an indebtedness of an issuer means the ratio which the value of the total assets of such issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of such issuer. "Asset coverage" of a class of senior security of an issuer which is a stock means the ratio which the value of the total assets of such issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of such issuer plus the aggregate of the involuntary liquidation preference of such class of senior security which is a stock. The involuntary liquidation preference of a class of senior security which is a stock shall be deemed to mean the amount to which such class of senior security would be entitled on involuntary liquidation of the issuer in preference to a security junior to it.

(i) Future issuance of stock as voting stock; exceptions

Except as provided in subsection (a) of this section, or as otherwise required by law, every share of stock hereafter issued by a registered management company (except a common-law trust of the character described in section 80a-16(c) of this title) shall be a voting stock and have equal voting rights with every other outstanding voting stock: *Provided*, That this subsection shall not apply to shares issued pursuant to the terms of any warrant or subscription right outstanding on March 15, 1940, or any firm contract entered into before March 15, 1940, to purchase such securities from such company nor to shares issued in accordance with any rules, regulations, or orders which the Commission may make permitting such issue.

(j) Securities issued by registered face-amount certificate company

Notwithstanding any provision of this subchapter, it shall be unlawful, after August 22, 1940, for any registered face-amount certificate company—

(1) to issue, except in accordance with such rules, regulations, or orders as the Commission may prescribe in the public interest or as necessary or appropriate for the protection of investors, any security other than (A) a face-amount certificate; (B) a common stock having a par value and being without preference as to dividends or distributions and having at least equal voting rights with any outstanding security of such company; or (C) short-term payment or promissory notes or other indebtedness issued in consideration of any loan, extension, or renewal thereof, made by a bank or other person and privately arranged and not intended to be publicly offered;

(2) if such company has outstanding any security, other than such face-amount certificates, common stock, promissory notes, or other evidence of indebtedness, to make any distribution or declare or pay any dividend on any capital security in contravention of such rules and regulations or orders as the Commission may prescribe in the public interest or as necessary or appropriate for the protection of investors or to insure the financial integrity of such company, to prevent the impairment of the company's ability to meet its obligations upon its face-amount certificates; or

(3) to issue any of its securities except for cash or securities including securities of which such company is the issuer.

(k) Application of section to companies operating under Small Business Investment Act provisions

The provisions of subparagraphs (A) and (B) of paragraph (1) of subsection (a) of this section shall not apply to investment companies operating under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.], and the provisions of paragraph (2) of said subsection shall not apply to such companies so long as such class of senior security shall be held or guaranteed by the Small Business Administration.

(Aug. 22, 1940, ch. 686, title I, § 18, 54 Stat. 817; Aug. 21, 1958, Pub. L. 85-699, title III, § 307(c), 72 Stat. 694; Dec. 14, 1970, Pub. L. 91-547, § 10, 84 Stat. 1421; Aug. 21, 1958, Pub. L. 85-699, title III, § 319, as added Oct. 27, 1972, Pub. L. 92-595, § 2(g), 86 Stat. 1316; June 4, 1975, Pub. L. 94-29, § 28(4), 89 Stat. 165.)

REFERENCES IN TEXT

"This subchapter", referred to in subsec. (j), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

The Small Business Investment Act of 1958, referred to in subsec. (k), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§ 661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note under section 661 of this title and Tables volume.

AMENDMENTS

1975—Subsec. (i). Pub. L. 94-29 substituted "section 80a-16(c) of this title" for "section 80a-16(b) of this title".

1972—Subsec. (k). Section 319 of Pub. L. 85-699, as added by Pub. L. 92-595, added provision that subsec. (a)(2) shall not apply to companies operating under the Small Business Investment Act of 1958, so long as such class of senior security shall be held or guaranteed by the Small Business Administration.

1970—Subsec. (f)(2). Pub. L. 91-547 substituted "That (A)" and "or (B) the" for "(A) That" and "or (B) that the" and added provision for purpose of insuring fair and equitable treatment of the holders of the outstanding voting securities of each class or series of stock of such company, that the Commission may by rule, regulation, or order direct that any matter required to be submitted to the holders of the outstanding voting securities of such company shall not be deemed to have been effectively acted upon unless approved by the holders of such percentage (not exceeding a majority) of the outstanding voting securities of each class or series of stock affected by such matter as shall be prescribed in such rule, regulation, or order.

1958—Subsec. (k). Pub. L. 85-699 added subsec. (k).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10

of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Sale by closed-end company of common stock upon warrant, see section 80a-23 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a-23 of this title.

§ 80a-19. Payments or distributions

(a) Dividends; restriction; exception

It shall be unlawful for any registered investment company to pay any dividend, or to make any distribution in the nature of a dividend payment, wholly or partly from any source other than—

(1) such company's accumulated undistributed net income, determined in accordance with good accounting practice and not including profits or losses realized upon the sale of securities or other properties; or

(2) such company's net income so determined for the current or preceding fiscal year;

unless such payment is accompanied by a written statement which adequately discloses the source or sources of such payment. The Commission may prescribe the form of such statement by rules and regulations in the public interest and for the protection of investors.

(b) Long-term capital gains; limitation

It shall be unlawful in contravention of such rules, regulations, or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors for any registered investment company to distribute long-term capital gains, as defined in title 26, more often than once every twelve months.

(Aug. 22, 1940, ch. 686, title I, § 19, 54 Stat. 821; Dec. 14, 1970, Pub. L. 91-547, § 11, 84 Stat. 1422.)

AMENDMENTS

1970—Pub. L. 91-547 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-547, see section 30(1) of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80a-20. Proxies; voting trusts; circular ownership

(a) Prohibition on use of means of interstate commerce for solicitation of proxies

It shall be unlawful for any person, by use of the mails or any means or instrumentality of interstate commerce or otherwise, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security of which a registered investment company is the issuer in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) Prohibition on use of means of interstate commerce for sale of voting-trust certificates

It shall be unlawful for any registered investment company or affiliated person thereof, any issuer of a voting-trust certificate relating to any security of a registered investment company, or any underwriter of such a certificate, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to offer for sale, sell, or deliver after sale, in connection with a public offering, any such voting-trust certificate. The prohibitions of this subsection shall not apply to a class of voting-trust certificates, if any certificate of such class was made the subject of a public offering by the issuer or by or through an underwriter prior to March 15, 1940.

(c) Prohibition on purchase of securities knowingly resulting in cross-ownership or circular ownership

No registered investment company shall purchase any voting security if, to the knowledge of such registered company, cross-ownership or circular ownership exists, or after such acquisition will exist, between such registered company and the issuer of such security. Cross-ownership shall be deemed to exist between two companies when each of such companies beneficially owns more than 3 per centum of the outstanding voting securities of the other company. Circular ownership shall be deemed to exist between two companies if such companies are included within a group of three or more companies, each of which—

(1) beneficially owns more than 3 per centum of the outstanding voting securities of one or more other companies of the group; and

(2) has more than 3 per centum of its own outstanding voting securities beneficially owned by another company, or by each of two or more other companies, of the group.

(d) Duty to eliminate prior existing cross-ownership or circular ownership

If on the effective date of this subchapter cross-ownership or circular ownership exists between a registered investment company and any other company or companies, it shall be the duty of such registered company, within five years after such effective date, to eliminate such cross-ownership or circular ownership. If at any time after the effective date of this subchapter cross-ownership or circular ownership between a registered investment company and any other company or companies comes into existence upon the purchase by a registered investment company of the securities of another company, it shall be the duty of such registered company, within one year after it first knows of the existence of such cross-ownership or circular ownership, to eliminate the same.

(Aug. 22, 1940, ch. 686, title I, § 20, 54 Stat. 822.)

REFERENCES IN TEXT

The effective date of this subchapter, referred to in subsec. (d), in the original read "the effective date of this title". For effective date of this subchapter, see section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Application to and mailing copies of proxy by indenture trustee to security holders desiring to communicate with other security holders, see section 77*lll* of this title.

Solicitation of declaration of removal of trustee of common-law trust as solicitation of proxy, see section 80a-16 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a-16 of this title.

§ 80a-21. Loans by management companies

It shall be unlawful for any registered management company to lend money or property to any person, directly or indirectly, if—

(a) the investment policies of such registered company, as recited in its registration statement and reports filed under this subchapter, do not permit such a loan; or

(b) such person controls or is under common control with such registered company; except that the provisions of this paragraph shall not apply to the extension or renewal of any such loan made prior to March 15, 1940, or to any loan from a registered company to a company which owns all of the outstanding securities of such registered company, except directors' qualifying shares.

(Aug. 22, 1940, ch. 686, title I, § 21, 54 Stat. 822.)

REFERENCES IN TEXT

"This subchapter", referred to in par. (a), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

CROSS REFERENCES

Unlawful transactions for registered investment companies, see section 80a-17 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a-17 of this title.

§ 80a-22. Distribution, redemption, and repurchase of securities; regulations by securities associations

(a) Rules relating to minimum and maximum prices for purchase and sale of securities from investment company; time for resale and redemption

A securities association registered under section 78*o*-3 of this title may prescribe, by rules adopted and in effect in accordance with said section and subject to all provisions of said section applicable to the rules of such an association—

(1) a method or methods for computing the minimum price at which a member thereof may purchase from any investment company any redeemable security issued by such company and the maximum price at which a member may sell to such company any redeemable security issued by it or which he may receive for such security upon redemption, so that the price in each case will bear such relation to the current net asset value of such security computed as of such time as the rules may prescribe; and

(2) a minimum period of time which must elapse after the sale or issue of such security before any resale to such company by a member or its redemption upon surrender by a member;

in each case for the purpose of eliminating or reducing so far as reasonably practicable any dilution of the value of other outstanding securities of such company or any other result of such purchase, redemption, or sale which is unfair to holders of such other outstanding securities; and said rules may prohibit the members of the association from purchasing, selling, or surrendering for redemption any such redeemable securities in contravention of said rules.

(b) Rules relating to purchase of securities by members from issuer investment company

(1) Such a securities association may also, by rules adopted and in effect in accordance with section 78*o*-3 of this title, and notwithstanding the provisions of subsection (b)(8) thereof but subject to all other provisions of said section applicable to the rules of such an association, prohibit its members from purchasing, in connection with a primary distribution of redeemable securities of which any registered investment company is the issuer, any such security from the issuer or from any principal underwriter except at a price equal to the price at which such security is then offered to the public less a commission, discount, or spread which is computed in conformity with a method or methods, and within such limitations as to the relation thereof to said public offering price, as such rules may prescribe in order that the price at which such security is offered or sold to the public shall not include an excessive sales load but shall allow for reasonable compensation for sales personnel, broker-dealers, and underwriters, and for reasonable sales loads to investors. The Commission shall on application or otherwise, if it appears that smaller companies are subject to relatively higher operating costs, make due allowance therefor by granting any such company or class of companies appropriate qualified exemptions from the provisions of this section.

(2) At any time after the expiration of eighteen months from December 14, 1970, or after a securities association has adopted rules as contemplated by this subsection, the Commission may make such rules and regulations pursuant to section 78*o*(b)(10) of this title as are appropriate to effectuate the purpose of this subsection with respect to sales of shares of a registered investment company by broker-dealers subject to regulation under section 78*o*(b)(8) of this title: *Provided,* That the underwriter of such shares may file with the Commission at any time a notice of election to comply with the rules prescribed pursuant to this subsection by a national securities association specified in such notice, and thereafter the sales load shall not exceed that prescribed by such rules of such association, and the rules of the Commission as hereinabove authorized shall thereafter be inapplicable to such sales.

(3) At any time after the expiration of eighteen months from December 14, 1970 (or, if earlier, after a securities association has adopted for purposes of paragraph (1) any rule respecting excessive sales loads), the Commission may alter or supplement the rules of any securities association as may be necessary to effectuate the purposes of this subsection in the manner provided by section 78o-3(k)(2) of this title.

(4) If any provision of this subsection is in conflict with any provision of any law of the United States in effect on December 14, 1970, the provisions of this subsection shall prevail.

(c) Conflicting rules of Commission and associations

The Commission may make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in subsection (a) of this section in respect of the rules which may be made by a registered securities association governing its members. Any rules and regulations so made by the Commission, to the extent that they may be inconsistent with the rules of any such association, shall so long as they remain in force supersede the rules of the association and be binding upon its members as well as all other underwriters and dealers to whom they may be applicable.

(d) Sale of securities except to or through principal underwriter; price of securities

No registered investment company shall sell any redeemable security issued by it to any person except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, a principal underwriter, or the issuer, except at a current public offering price described in the prospectus. Nothing in this subsection shall prevent a sale made (i) pursuant to an offer of exchange permitted by section 80a-11 of this title including any offer made pursuant to section 80a-11(b) of this title; (ii) pursuant to an offer made solely to all registered holders of the securities, or of a particular class or series of securities issued by the company proportionate to their holdings or proportionate to any cash distribution made to them by the company (subject to appropriate qualifications designed solely to avoid issuance of fractional securities); or (iii) in accordance with rules and regulations of the Commission made pursuant to subsection (b) of section 80a-12 of this title.

(e) Suspension of right of redemption or postponement of date of payment

No registered investment company shall suspend the right of redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption except—

(1) for any period (A) during which the New York Stock Exchange is closed other than customary week-end and holiday closings or (B) during which trading on the New York Stock Exchange is restricted;

(2) for any period during which an emergency exists as a result of which (A) disposal by the company of securities owned by it is not reasonably practicable or (B) it is not reasonably practicable for such company fairly to determine the value of its net assets; or

(3) for such other periods as the Commission may by order permit for the protection of security holders of the company.

The Commission shall by rules and regulations determine the conditions under which (i) trading shall be deemed to be restricted and (ii) an emergency shall be deemed to exist within the meaning of this subsection. Any company which, as of March 15, 1940, was required by provision of its charter, certificate of incorporation, articles of association, or trust indenture, or of a bylaw or regulation duly adopted thereunder, to postpone the date of payment or satisfaction upon redemption of redeemable securities issued by it, shall be exempt from the requirements of this subsection; but such exemption shall terminate upon the expiration of one year from the effective date of this subchapter, or upon the repeal or amendment of such provision, or upon the sale by such company after March 15, 1940, of any security (other than short-term paper) of which it is the issuer, whichever first occurs.

(f) Restrictions on transferability or negotiability of securities

No registered open-end company shall restrict the transferability or negotiability of any security of which it is the issuer except in conformity with the statements with respect thereto contained in its registration statement nor in contravention of such rules and regulations as the Commission may prescribe in the interests of the holders of all of the outstanding securities of such investment company.

(g) Issuance of securities for services or property other than cash

No registered open-end company shall issue any of its securities (1) for services; or (2) for property other than cash or securities (including securities of which such registered company is the issuer), except as a dividend or distribution to its security holders or in connection with a reorganization.

(Aug. 22, 1940, ch. 686, title I, § 22, 54 Stat. 823; Dec. 14, 1970, Pub. L. 91-547, § 12, 84 Stat. 1422.)

REFERENCES IN TEXT

The effective date of this subchapter, referred to in subsec. (e), in the original read "the effective date of this title". For effective date of this subchapter, see section 80a-52 of this title.

AMENDMENTS

1970—Subsec. (b). Pub. L. 91-547, § 12(a), designated existing provisions as par. (1), inserted "notwithstanding the provisions of subsection (b)(8) thereof but", and "other" in the phrase "all other provisions", substituted exclusion of "excessive sales load" for "unconscionable or grossly excessive sales load", provided for allowance for reasonable compensation for sales personnel, broker-dealers, and underwriters, and for reasonable sales loads to investors, and for grant by Commission of appropriate qualified exemptions from provisions of this section where on application or otherwise it appears that smaller companies are subject to relatively higher operating costs, and added pars. (2) to (4).

Subsec. (c). Pub. L. 91-547, § 12(b), provided for application of rules and regulations to registered investment companies, deleted introductory phrase "After one year from the effective date of this chapter", "registered" preceding "securities association" where first appearing, and substituted "prescribed in subsection (a) of this section" for "prescribed in subsections (a) and (b) of this section" and ". Any rules and regulations" for "; and any rules and regulations".

Subsec. (d). Pub. L. 91-547, § 12(c), substituted "public offering price described in the prospectus. Nothing in this subsection" for "public offering price described in the prospectus: *Provided, however,* That nothing in this subsection" and deleted "clause (1) or (2) of" preceding "section 80a-11(b) of this title".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Definition of term, prospectus, see section 80a-2 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a-2 of this title.

§ 80a-23. Closed-end companies

(a) Issuance of securities

No registered closed-end company shall issue any of its securities (1) for services; or (2) for property other than cash or securities (including securities of which such registered company is the issuer), except as a dividend or distribution to its security holders or in connection with a reorganization.

(b) Sale of common stock at price below current net asset value

No registered closed-end company shall sell any common stock of which it is the issuer at a price below the current net asset value of such stock, exclusive of any distributing commission or discount (which net asset value shall be determined as of a time within forty-eight hours, excluding Sundays and holidays, next preceding the time of such determination), except (1) in connection with an offering to the holders of one or more classes of its capital stock; (2) with the consent of a majority of its common stockholders; (3) upon conversion of a convertible security in accordance with its terms; (4) upon the exercise of any warrant outstanding on August 22, 1940, or issued in accordance with the provisions of section 80a-18(d) of this title; or (5) under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

(c) Purchase of securities of which it is issuer; exceptions

No registered closed-end company shall purchase any securities of any class of which it is the issuer except—

(1) on a securities exchange or such other open market as the Commission may designate by rules and regulations or orders: *Provided,* That if such securities are stock, such registered company shall, within the preceding six months, have informed stockholders of its intention to purchase stock of such class by letter or report addressed to stockholders of such class; or

(2) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or

(3) under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors in order to insure that such purchases are made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

(Aug. 22, 1940, ch. 686, title I, § 23, 54 Stat. 825.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80a-24. Registration of securities under Securities Act of 1933

(a) Registration statement; contents

In registering under the Securities Act of 1933 [15 U.S.C. 77a et seq.], any security of which it is the issuer, a registered investment company, in lieu of furnishing a registration statement containing the information and documents specified in schedule A of said Act [15 U.S.C. 77aa], may file a registration statement containing the following information and documents:

(1) such copies of the registration statement filed by such company under this subchapter, and of such reports filed by such company pursuant to section 80a-29 of this title or such copies of portions of such registration statement and reports, as the Commission shall designate by rules and regulations; and

(2) such additional information and documents (including a prospectus) as the Commission shall prescribe by rules and regulations as necessary or appropriate in the public interest or for the protection of investors.

(b) Filing of three copies of advertisement, pamphlet, etc. in connection with public offering; time of filing

It shall be unlawful for any of the following companies, or for any underwriter for such a company, in connection with a public offering of any security of which such company is the issuer, to make use of the mails or any means or instrumentalities of interstate commerce, to transmit any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors unless three copies of the full text thereof have been filed with the Commission or are filed with the Commission within ten days thereafter:

(1) any registered open-end company;

(2) any registered unit investment trust; or

(3) any registered face-amount certificate company.

(c) Additional requirement for prospectuses relating to periodic payment plan certificates or face-amount certificate

In addition to the powers relative to prospectuses granted the Commission by section 10 of the Securities Act of 1933 [15 U.S.C. 77j], the Commission is authorized to require, by rules and regulations or order, that the information contained in any prospectus relating to any periodic payment plan certificate or face-amount certificate registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.], on or after the effective date of this subchapter be presented in such form and order of items, and such prospectus contain such summaries of any portion of such information, as are necessary or appropriate in the public interest or for the protection of investors.

(d) Application of other provisions to securities of investment companies, face-amount certificate companies, and open-end companies or unit investment trust

The exemption provided by paragraph (8) of section 3(a) of the Securities Act of 1933 [15 U.S.C. 77c(a)(8)] shall not apply to any security of which an investment company is the issuer. The exemption provided by paragraph (11) of said section 3(a) [15 U.S.C. 77c(a)(11)] shall not apply to any security of which a registered investment company is the issuer, except a security sold or disposed of by the issuer or bona fide offered to the public prior to the effective date of this subchapter and with respect to a security so sold, disposed of, or offered, shall not apply to any new offering thereof on or after the effective date of this subchapter. The exemption provided by section 4(3) of the Securities Act of 1933 [15 U.S.C. 77d(3)] shall not apply to any transaction in a security issued by a face-amount certificate company or in a redeemable security issued by an open-end management company or unit investment trust if any other security of the same class is currently being offered or sold by the issuer or by or through an underwriter in a distribution which is not exempted from section 5 of said Act [15 U.S.C. 77e], except to such extent and subject to such terms and conditions as the Commission, having due regard for the public interest and the protection of investors, may prescribe by rules or regulations with respect to any class of persons, securities, or transactions.

(e) Amendment of registration statements relating to securities issued by face-amount certificate companies, open-end management companies or unit investment trusts

(1) A registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.] relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust may be amended after its effective date so as to increase the securities specified therein as proposed to be offered. At the time of filing such amendment there shall be paid to the Commission a fee, calculated in the manner specified in section 6(b) of said Act [15 U.S.C. 77f(b)], with respect to the additional securities therein proposed to be offered.

(2) The filing of such an amendment to a registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.] shall not be deemed to have taken place unless it is accompanied by a United States postal money order or a certified bank check or cash for the amount of the fee required under paragraph (1) of this subsection.

(3) For the purposes of section 11 of the Securities Act of 1933, as amended [15 U.S.C. 77k] the effective date of the latest amendment filed pursuant to this subsection or otherwise shall be deemed the effective date of the registration statement with respect to securities sold after such amendment shall have become effective. For the purposes of section 13 of the Securities Act of 1933, as amended [15 U.S.C. 77m], no such security shall be deemed to have been bona fide offered to the public prior to the effective date of the latest amendment filed pursuant to this subsection. Except to the extent the Commission otherwise provides by rules or regulations as appropriate in the public interest or for the protection of investors, no prospectus relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust which varies for the purposes of subsection (a)(3) of section 10 of the Securities Act of 1933 [15 U.S.C. 77j(a)(3)] from the latest prospectus filed as a part of the registration statement shall be deemed to meet the requirements of said section 10 [15 U.S.C. 77j] unless filed as part of an amendment to the registration statement under said Act [15 U.S.C. 77a et seq.] and such amendment has become effective.

(f) Effective date of registration statements in cases of securities sold in excess of securities included in effective registration statement

In the case of securities issued by a face-amount certificate company or redeemable securities issued by an open-end management company or unit investment trust, which are sold in an amount in excess of the number of securities included in an effective registration statement of any such company, such company may, in accordance with such rules and regulations as the Commission shall adopt as it deems necessary or appropriate in the public interest or for the protection of investors, elect to have the registration of such securities deemed effective as of the time of their sale, upon payment to the Commission, within six months after any such sale, of a registration fee of three times the amount of the fee which would have otherwise been applicable to such securities. Upon any such election and payment, the registration statement of such company shall be considered to have been in effect with respect to such shares. The Commission may also adopt rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors to permit the registration of an indefinite number of the securities issued by a face-amount certificate company or redeemable securities issued by an open-end management company or unit investment trust.

(Aug. 22, 1940, ch. 686, title I, § 24, 54 Stat. 825; Aug. 10, 1954, ch. 667, title IV, §§ 402, 403, 68 Stat. 689; Dec. 14, 1970, Pub. L. 91-547, § 13, 84 Stat. 1423.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (a), (c), and (e), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

"This subchapter", referred to in subsec. (a), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

The effective date of this subchapter, referred to in subsecs. (c) and (d), in the original read "the effective date of this title". For effective date of this subchapter, see section 80a-52 of this title.

AMENDMENTS

1970—Subsec. (d). Pub. L. 91-547, § 13(a), substituted "section 4(3) of the Securities Act of 1933" for "the third clause of section 4(1) of the Securities Act of 1933" and deleted a comma preceding "if any".

Subsec. (f). Pub. L. 91-547, § 13(b), added subsec. (f).

1954—Subsec. (d). Act Aug. 10, 1954, § 402, added provision making dealer's exemption contained in the third clause of section 77d(1) of this title inapplicable to transactions in the securities of investment companies that are offered to the public on a continuous basis, subject to certain exceptions.

Subsec. (e). Act Aug. 10, 1954, § 403, added subsec. (e).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment effective sixty days after Aug. 10, 1954, see note under section 77b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80a-25. Reorganization plans; reports by Commission

(a) Filing of reorganization plan and other information with Commission

Any person who, by use of the mails or any means or instrumentality of interstate commerce or otherwise, solicits or permits the use of his name to solicit any proxy, consent, authorization, power of attorney, ratification, deposit, or dissent in respect of any plan of reorganization of any registered investment company shall file with, or mail to, the Commission for its information, within twenty-four hours after the commencement of any such solicitation, a copy of such plan and any deposit agreement relating thereto and of any proxy, consent, authorization, power of attorney, ratification, instrument of deposit, or instrument of dissent in respect thereto, if or to the extent that such documents shall not already have been filed with the Commission.

(b) Advisory report by Commission at request of shareholders

The Commission is authorized, if so requested, prior to any solicitation of security holders with respect to any plan of reorganization, by any registered investment company which is, or any of the securities of which are, the subject of or is a participant in any such plan, or if so requested by the holders of 25 per centum of any class of its outstanding securities, to render an advisory report in respect of the fairness of any such plan and its effect upon any class or classes of security holders. In such event any registered investment company, in respect of which the Commission shall have rendered any such advisory report, shall mail promptly a copy of such advisory report to all its security holders affected by any such plan: *Provided*, That such advisory report shall have been received by it at least forty-eight hours (not including Sundays and holidays) before final action is taken in relation to such plan at any meeting of security holders called to act in relation thereto, or any adjournment of any such meeting, or if no meeting be called, then prior to the final date of acceptance of such plan by security holders. In respect of securities not registered as to ownership, in lieu of mailing a copy of such advisory report, such registered company shall publish promptly a statement of the existence of such advisory report in a newspaper of general circulation in its principal place of business and shall make available copies of such advisory report upon request. Notwithstanding the provision of this section the Commission shall not render such advisory report although so requested by any such investment company or such security holders if the fairness or feasibility of said plan is in issue in any proceeding pending in any court of competent jurisdiction unless such plan is submitted to the Commission for that purpose by such court.

(c) Enjoinder of plan of reorganization

Any district court of the United States in the State of incorporation of a registered investment company, or any such court for the district in which such company maintains its principal place of business, is authorized to enjoin the consummation of any plan of reorganization of such registered investment company upon proceedings instituted by the Commission (which is authorized so to proceed upon behalf of security holders of such registered company, or any class thereof), if such court shall determine that any such plan is not fair and equitable to all security holders.

(d) Application of section to reorganizations under bankruptcy

Nothing contained in this section shall in any way affect or derogate from the powers of the courts of the United States and the Commission with reference to reorganizations contained in the Bankruptcy Act of 1898, as amended [11 U.S.C. 1 et seq.].

(Aug. 22, 1940, ch. 686, title I, § 25, 54 Stat. 826; Dec. 24, 1970, Pub. L. 91-547, § 14, 84 Stat. 1424.)

AMENDMENTS

1970—Subsec. (c). Pub. L. 91-547 substituted after "if such court shall determine" the words "that any such plan is not fair and equitable to all security holders" for "any such plan to be grossly unfair or to constitute gross misconduct or gross abuse of trust on the part of the officers, directors, or investment advisers of such registered company or other sponsors of such plan".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80a-26. Unit investment trusts

(a) Custody and sale of securities

No principal underwriter for or depositor of a registered unit investment trust shall sell, except by surrender to the trustee for redemption, any security of which such trust is the issuer (other than short-term paper), unless the trust indenture, agreement of custodianship, or other instrument pursuant to which such security is issued—

(1) designates one or more trustees or custodians, each of which is a bank, and provides that each such trustee or custodian shall have at all times an aggregate capital, surplus, and undivided profits of a specified minimum amount, which shall not be less than $500,000 (but may also provide, if such trustee or custodian publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, that for the purposes of this paragraph the aggregate capital, surplus, and undivided profits of such trustee or custodian shall be deemed to be its aggregate capital, surplus, and undivided profits as set forth in its most recent report of condition so published);

(2) provides, in substance, (A) that during the life of the trust the trustee or custodian, if not otherwise remunerated, may charge against and collect from the income of the trust, and from the corpus thereof if no income is available, such fees for its services and such reimbursement for its expenses as are provided for in such instrument; (B) that no such charge or collection shall be made except for services theretofore performed or expenses theretofore incurred; (C) that no payment to the depositor of or a principal underwriter for such trust, or to any affiliated person or agent of such depositor or underwriter, shall be allowed the trustee or custodian as an expense (except that provision may be made for the payment to any such person of a fee, not exceeding such reasonable amount as the Commission may prescribe as compensation for performing bookkeeping and other administrative services, of a character normally performed by the trustee or custodian itself); and (D) that the trustee or custodian shall have possession of all securities and other property in which the funds of the trust are invested, all funds held for such investment, all equalization, redemption, and other special funds of the trust, and all income upon, accretions to, and proceeds of such property and funds, and shall segregate and hold the same in trust (subject only to the charges and collections allowed under clauses (A), (B), and (C) of this paragraph) until distribution thereof to the security holders of the trust;

(3) provides, in substance, that the trustee or custodian shall not resign until either (A) the trust has been completely liquidated and the proceeds of the liquidation distributed to the security holders of the trust, or (B) a successor trustee or custodian, having the qualifications prescribed in paragraph (1) of this subsection, has been designated and has accepted such trusteeship or custodianship; and

(4) provides, in substance, (A) that a record will be kept by the depositor or an agent of the depositor of the name and address of, and the shares issued by the trust and held by, every holder of any security issued pursuant to such instrument, insofar as such information is known to the depositor or agent; and (B) that whenever a security is deposited with the trustee in substitution for any security in which such security holder has an undivided interest, the depositor or the agent of the depositor will, within five days after such substitution, either deliver or mail to such security holder a notice of substitution, including an identification of the securities eliminated and the securities substituted, and a specification of the shares of such security holder affected by the substitution.

(b) Substitution of securities

It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intend[1] by the policy and provisions of this subchapter.

(c) Binding contract or agreement embodying applicable provisions deemed to qualify non-complying instrument by which securities were issued

In the event that a trust indenture, agreement of custodianship, or other instrument pursuant to which securities of a registered unit investment trust are issued does not comply with the requirements of subsection (a) of this section, such instrument will be deemed to meet such requirements if a written contract or agreement binding on the parties and embodying such requirements has been executed by the depositor on the one part and the trustee or custodian on the other part, and three copies of such contract of[2] agreement have been filed with the Commission.

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[1] So in original. Probably should read "fairly intended".

[2] So in original. Probably should read "contract or agreement".

(d) Liquidation of unit investment trust

Whenever the Commission has reason to believe that a unit investment trust is inactive and that its liquidation is in the interest of the security holders of such trust, the Commission may file a complaint seeking the liquidation of such trust in the district court of the United States in any district wherein any trustee of such trust resides or has its principal place of business. A copy of such complaint shall be served on every trustee of such trust, and notice of the proceeding shall be given such other interested persons in such manner and at such times as the court may direct. If the court determines that such liquidation is in the interest of the security holders of such trust, the court shall order such liquidation and, after payment of necessary expenses, the distribution of the proceeds to the security holders of the trust in such manner and on such terms as may to the court appear equitable.

(Aug. 22, 1940, ch. 686, title I, § 26, 54 Stat. 827; Dec. 14, 1970, Pub. L. 91-547, § 15, 84 Stat. 1424.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

AMENDMENTS

1970—Subsec. (b). Pub. L. 91-547, § 15(a), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 91-547, § 15(a), (b), redesignated former subsec. (b) as (c), and deleted "at the effective date of this subchapter" preceding "comply" and substituted "contract of agreement" for "contract or agreement".

Subsec. (d). Pub. L. 91-547, § 15(a), redesignated subsec. (c) as (d).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Deposit of investments as certificate reserve requirements, see section 80a-28 of this title.

Registered management companies, deposit of securities and investments of, see section 80a-17 of this title.

Unlawful sale of periodic payment plan certificates, see section 80a-27 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a-12, 80a-17, 80a-27, 80a-28 of this title.

§ 80a-27. Periodic payment plans

(a) Sale of certificates; restrictions

It shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate, if—

(1) the sales load on such certificate exceeds 9 per centum of the total payments to be made thereon;

(2) more than one-half of any of the first twelve monthly payments thereon, or their equivalent, is deducted for sales load;

(3) the amount of sales load deducted from any one of such first payments exceeds proportionately the amount deducted from any other such payment, or the amount deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment;

(4) the first payment on such certificate is less than $20, or any subsequent payment is less than $10;

(5) if such registered company is a management company, the proceeds of such certificate or the securities in which such proceeds are invested are subject to management fees (other than fees for administrative services of the character described in clause (C), paragraph (2), of section 80a-26(a) of this title) exceeding such reasonable amount as the Commission may prescribe, whether such fees are payable to such company or to investment advisers thereof; or

(6) if such registered company is a unit investment trust the assets of which are securities issued by a management company, the depositor of or principal underwriter for such trust, or any affiliated person of such depositor or underwriter, is to receive from such management company or any affiliated person thereof any fee or payment on account of payments on such certificate exceeding such reasonable amount as the Commission may prescribe.

(b) Exemptions

If it appears to the Commission, upon application or otherwise, that smaller companies are subjected to relatively higher operating costs and that in order to make due allowance therefor it is necessary or appropriate in the public interest and consistent with the protection of investors that a provision or provisions of paragraph (1), (2), or (3) of subsection (a) of this section relative to sales load be relaxed in the case of certain registered investment companies issuing periodic payment plan certificates, or certain specified classes of such companies, the Commission is authorized by rules and regulations or order to grant any such company or class of companies appropriate qualified exemptions from the provisions of said paragraphs.

(c) Sale of certificates; requirements

It shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate, unless—

(1) such certificate is a redeemable security; and

(2) the proceeds of all payments on such certificate (except such amounts as are deducted for sales load) are deposited with a trustee or custodian having the qualifications prescribed in paragraph (1) of section 80a-26(a) of this title for the trustees of unit investment trusts, and are held by such trustee or custodian under an indenture or agree-

ment containing, in substance, the provisions required by paragraphs (2) and (3) of section 80a-26(a) of this title for the trust indentures of unit investment trusts.

(d) Surrender of certificates; regulations

Notwithstanding subsection (a) of this section, it shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the certificate provide that the holder thereof may surrender the certificate at any time within the first eighteen months after the issuance of the certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from such underwriter or depositor, equal to that part of the excess paid for sales loading which is over 15 per centum of the gross payments made by the certificate holder. The Commission may make rules and regulations applicable to such underwriters and depositors specifying such reserve requirements as it deems necessary or appropriate in order for such underwriters and depositors to carry out the obligations to refund sales charges required by this subsection.

(e) Refund privileges; notice; rules

With respect to any periodic payment plan certificate sold subject to the provisions of subsection (d) of this section, the registered investment company issuing such periodic payment plan certificate, or any depositor of or underwriter for such company, shall in writing (1) inform each certificate holder who has missed three payments or more, within thirty days following the expiration of fifteen months after the issuance of the certificate, or, if any such holder has missed one payment or more after such period of fifteen months but prior to the expiration of eighteen months after the issuance of the certificate, at any time prior to the expiration of such eighteen-month period, of his right to surrender his certificate as specified in subsection (d) of this section, and (2) inform the certificate holder of (A) the value of the holder's account as of the time the written notice was given to such holder, and (B) the amount to which he is entitled as specified in subsection (d) of this section. The Commission may make rules specifying the method, form, and contents of the notice required by this subsection.

(f) Charges, statement; rules; surrender of certificates; regulations

With respect to any periodic payment plan (other than a plan under which the amount of sales load deducted from any payment thereon does not exceed 9 per centum of such payment), the custodian bank for such plan shall mail to each certificate holder, within sixty days after the issuance of the certificate, a statement of charges to be deducted from the projected payments on the certificate and a notice of his right of withdrawal as specified in this section. The Commission may make rules specifying the method, form, and contents of the notice required by this subsection. The certificate holder may within forty-five days of the mailing of the notice specified in this subsection surrender his certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from the underwriter or depositor, equal to the difference between the gross payments made and the net amount invested. The Commission may make rules and regulations applicable to underwriters and depositors of companies issuing any such certificate specifying such reserve requirements as it deems necessary or appropriate in order for such underwriters and depositors to carry out the obligations to refund sales charges required by this subsection.

(g) Governing provisions; election

Notwithstanding the provisions of subsections (a) and (d) of this section, a registered investment company issuing periodic payment plan certificates may elect, by written notice to the Commission, to be governed by the provisions of subsection (h) of this section rather than the provisions of subsections (a) and (d) of this section.

(h) Sale of certificates; restrictions

Upon making the election specified in subsection (g) of this section, it shall be unlawful for any such electing registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate, if—

(1) the sales load on such certificate exceeds 9 per centum of the total payments to be made thereon;

(2) more than 20 per centum of any payment thereon is deducted for sales load, or an average of more than 16 per centum is deducted for sales load from the first forty-eight monthly payments thereon, or their equivalent;

(3) the amount of sales load deducted from any one of the first twelve monthly payments, the thirteenth through twenty-fourth monthly payments, the twenty-fifth through thirty-sixth monthly payments, or the thirty-seventh through forty-eighth monthly payments, or their equivalents, respectively, exceeds proportionately the amount deducted from any other such payment, or the amount deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment;

(4) the deduction for sales load on the excess of the payment or payments in any month over the minimum monthly payment, or its equivalent, to be made on the certificate exceeds the sales load applicable to payments subsequent to the first forty-eight monthly payments or their equivalent;

(5) the first payment on such certificate is less than $20, or any subsequent payment is less than $10;

(6) if such registered company is a management company, the proceeds of such certificate or the securities in which such proceeds are invested are subject to management fees (other than fees for administrative services of the character described in clause (C) of paragraph (2) of section 80a-26(a) of this title) exceeding such reasonable amount as the Commission may prescribe, whether such fees are payable to such company or to investment advisers thereof; or

(7) if such registered company is a unit investment trust the assets of which are securities issued by a management company, the depositor of or principal underwriter for such trust, or any affiliated person of such depositor or underwriter, is to receive from such management company or any affiliated person thereof any fee or payment on account of payments on such certificate exceeding such reasonable amount as the Commission may prescribe.

(Aug. 22, 1940, ch. 686, title I, § 27, 54 Stat. 829; Dec. 14, 1970, Pub. L. 91-547, § 16, 84 Stat. 1424; Nov. 23, 1971, Pub. L. 92-165, 85 Stat. 487.)

AMENDMENTS

1971—Subsec. (f). Pub. L. 92-165 inserted the parenthetical text "(other than a plan under which the amount of sales load deducted from any payment thereon does not exceed 9 per centum of such payment)".

1970—Subsecs. (d) to (h). Pub. L. 91-547 added subsecs. (d) to (h).

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-547, see section 30(3) of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80a-28. Face-amount certificate companies

(a) Issuance or sale of certificates

It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, unless—

(1) such company, if organized before March 15, 1940, was actively and continuously engaged in selling face-amount certificates on and before that date, and has outstanding capital stock worth upon a fair valuation of assets not less than $50,000; or if organized on or after March 15, 1940, has capital stock in an amount not less than $250,000 which has been bona fide subscribed and paid for in cash; and

(2) such company maintains at all times minimum certificate reserves on all its outstanding face-amount certificates in an aggregate amount calculated and adjusted as follows:

(A) the reserves for each certificate of the installment type shall be based on assumed annual, semi-annual, quarterly, or monthly reserve payments according to the manner in which gross payments for any certificate year are made by the holder, which reserve payments shall be sufficient in amount, as and when accumulated at a rate not to exceed 3½ per centum per annum compounded annually, to provide the minimum maturity or face amount of the certificate when due. Such reserve payments may be graduated according to certificate years so that the reserve payment or payments for the first certificate year shall amount to at least 50 per centum of the required gross annual payment for such year and the reserve payment or payments for each of the second to fifth certificate years inclusive shall amount to at least 93 per centum of each such year's required gross annual payment and for the sixth and each subsequent certificate year the reserve payment or payments shall amount to at least 96 per centum of each such year's required gross annual payment: *Provided,* That such aggregate reserve payments shall amount to at least 93 per centum of the aggregate gross annual payments required to be made by the holder to obtain the maturity of the certificate. The company may at its option take as loading from the gross payment or payments for a certificate year, as and when made by the certificate holder, an amount or amounts equal in the aggregate for such year to not more than the excess, if any, of the gross payment or payments required to be made by the holder for such year, over and above the percentage of the gross annual payment required herein for such year for reserve purposes. Such loading may be taken by the company prior to or after the setting up of the reserve payment or payments for such year and the reserve payment or payments for such year may be graduated and adjusted to correspond with the amount of the gross payment or payments made by the certificate holder for such year less the loading so taken;

(B) if the foregoing minimum percentages of the gross annual payments required under the provisions of such certificate should produce reserve payments larger than are necessary at 3½ per centum per annum compounded annually to provide the minimum maturity or face amount of the certificate when due, the reserve shall be based upon reserve payments accumulated as provided under preceding subparagraph (A) of this subsection [1] except that in lieu of the 3½ per centum rate specified therein, such rate shall be lowered to the minimum rate, expressed in multiples of one-eighth of 1 per centum, which will accumulate such reserve payments to the maturity value when due;

(C) if the actual annual gross payment to be made by the certificate holder on any certificate issued prior to or after the effective date of this chapter is less than the amount of any assumed reserve payment or payments for a certificate year, such company shall maintain as a part of such minimum certificate reserves a deficiency reserve equal to the total present value of future deficiencies in the gross payments, calculated at a rate not to exceed 3½ per centum per annum compounded annually;

(D) for each certificate of the installment type the amount of the reserve shall at any time be at least equal to (1) the then amount of the reserve payments set up under subparagraphs (A) or (B) of this paragraph; (2) the accumulations on such reserve payments as computed under subparagraphs (A) or (B) of this paragraph; (3) the amount of any deficiency reserve required under subparagraph (C) of this paragraph; and (4) such amount as shall have been credited to the account of each certificate holder in the form of any credit, or any dividend, or any interest in addition to the minimum maturity amount specified in such certificate, plus any accumulations on any amount or amounts so credited, at a rate not exceeding 3½ per centum per annum compounded annually;

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[1] So in original. Should probably read "subparagraph (A) of this paragraph".

(E) for each certificate which is fully paid, including any fully paid obligations resulting from or effected upon the maturity of the previously issued certificate, and for each paid-up certificate issued as provided in subsection (f) of this section prior to maturity, the amount of the reserve shall at any time be at least equal to (1) such amount as and when accumulated at a rate not to exceed 3½ per centum per annum compounded annually, will provide the amount or amounts payable when due and (2) such amount as shall have been credited to the account of each such certificate holder in the form of any credit, or any dividend, or any interest in addition to the minimum maturity amount specified in the certificate, plus any accumulations on any amount or amounts so credited, at a rate not exceeding 3½ per centum per annum compounded annually;

(F) for each certificate of the installment type under which gross payments have been made by or credited to the holder thereof covering a payment period or periods or any part thereof beyond the then current payment period as defined by the terms of such certificate, and for which period or periods no reserve has been set up under subparagraph (A) or (B) of this paragraph, an advance payment reserve shall be set up and maintained in the amount of the present value of any such unapplied advance gross payments, computed at a rate not to exceed 3½ per centum per annum compounded annually;

(G) such appropriate contingency reserves for death and disability benefits and for reinstatement rights on any such certificate providing for such benefits or rights as the Commission shall prescribe by rule, regulation, or order based upon the experience of face-amount companies in relation to such contingencies.

At no time shall the aggregate certificate reserves herein required by subparagraphs (A) to (F) of this paragraph, be less than the aggregate surrender values and other amounts to which all certificate holders may be then entitled.

For the purpose of this subsection, no certificate of the installment type shall be deemed to be outstanding if before a surrender value has been attained the holder thereof has been in continuous default in making his payments thereon for a period of one year.

(b) Asset requirements prior to sale of certificates

It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, unless such company has, in cash or qualified investments, assets having a value not less than the aggregate amount of the capital stock requirement and certificate reserves as computed under the provisions of subsection (a) of this section. As used in this subsection, "qualified investments" means investments of a kind which life-insurance companies are permitted to invest in or hold under the provisions of the Code of the District of Columbia as heretofore or hereafter amended, and such other investments as the Commission shall by rule, regulation, or order authorize as qualified investments. Such investments shall be valued in accordance with the provisions of said Code where such provisions are applicable. Investments to which such provisions do not apply shall be valued in accordance with such rules, regulations, or orders as the Commission shall prescribe for the protection of investors.

(c) Certificate reserve requirements

The Commission shall by rule, regulation, or order, in the public interest or for the protection of investors, require a registered face-amount certificate company to deposit and maintain, upon such terms and conditions as the Commission shall prescribe and as are appropriate for the protection of investors, with one or more institutions having the qualifications required by paragraph (1) of section 80a-26(a) of this title for a trustee of a unit investment trust, all or any part of the investments maintained by such company as certificate reserve requirements under the provisions of subsection (b) of this section: *Provided, however,* That where qualified investments are maintained on deposit by such company in respect of its liabilities under certificates issued to or held by residents of any State as required by the statute of such State or by any order, regulation, or requirement of such State or any official or agency thereof, the amount so on deposit, but not to exceed the amount of reserves required by subsection (a) of this section for the certificates so issued or held, shall be deducted from the amount of qualified investments that may be required to be deposited hereunder.

Assets which are qualified investments under subsection (b) of this section and which are deposited under or as permitted by this subsection, may be used and shall be considered as a part of the assets required to be maintained under the provisions of said subsection (b).

(d) Provisions required in certificate

It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, unless such certificate contains a provision or provisions to the effect—

(1) that, in respect of any certificate of the installment type, during the first certificate year the holder of the certificate, upon surrender thereof, shall be entitled to a value

payable in cash not less than the reserve payments as specified in subparagraph (A) or (B) of paragraph (2) of subsection (a) of this section and at the end of such certificate year, a value payable in cash at least equal to 50 per centum of the amount of the gross annual payment required thereby for such year;

(2) that, in respect of any certificate of the installment type, at any time after the expiration of the first certificate year and prior to maturity, the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than the then amount of the reserve for such certificate required by numbered items (1) and (2) of subparagraph (D) of paragraph (2) of subsection (a) of this section, less a surrender charge that shall not exceed 2 per centum of the face or maturity amount of the certificate, or 15 per centum of the amount of such reserve, whichever is the lesser, but in no event shall such value be less than 50 per centum of the amount of such reserve. The amount of the surrender value for the end of each certificate year shall be set out in the certificate;

(3) that, in respect of any certificate of the installment type, the holder of the certificate, upon surrender thereof for cash or upon receipt of a paid-up certificate as provided in subsection (f) of this section, shall be entitled to a value payable in cash equal to the then amount of any advance payment reserve under such certificate required by subparagraph (F) of paragraph (2) of subsection (a) of this section in addition to any other amounts due the holder hereunder;

(4) that at any time prior to maturity, in respect of any certificate which is fully paid, the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than the then amount of the reserve for such certificate required by item (1) of subparagraph (E) of paragraph (2) of subsection (a) of this section, less a surrender charge that shall not exceed 2 per centum of the face or maturity amount of the certificate, or 15 per centum of the amount of such reserve, whichever is the lesser: *Provided, however,* That such surrender charge shall not apply as to any obligations of a fully paid type resulting from the maturity of a previously issued certificate. The amount of the surrender value for the end of each certificate year shall be set out in the certificate;

(5) that in respect of any certificate, the holder of the certificate, upon maturity, upon surrender thereof for cash or upon receipt of a paid-up certificate as provided in subsection (f) of this section, shall be entitled to a value payable in cash equal to the then amount of the reserve, if any, for such certificate required by item (4) of subparagraph (D) of paragraph (2) of subsection (a) of this section or item (2) of subparagraph (E) of paragraph (2) of said subsection (a) in addition to any other amounts due the holder hereunder.

The term "certificate year" as used in this section in respect of any certificate of the installment type means a period or periods for which one year's payment or payments as provided by the certificate have been made thereon by the holder and the certificate maintained in force by such payments for the time for which the same have been made, and in respect of any certificate which is fully paid or paid-up means any year ending on the anniversary of the date of issuance of the certificate.

Any certificate may provide for loans or advances by the company to the certificate holder on the security of such certificate upon terms prescribed therein but at an interest rate not exceeding 6 per centum per annum. The amount of the required reserves, deposits, and the surrender values thereof available to the holder may be adjusted to take into account any unpaid balance on such loans or advances and interest thereon, for the purposes of this subsection and subsections (b) and (c) of this section.

Any certificate may provide that the company at its option may, prior to the maturity thereof, defer any payment or payments to the certificate holder to which he may be entitled under this subsection, for a period of not more than thirty days: *Provided,* That in the event such option is exercised by the company, interest shall accrue on any payment or payments due to the holder, for the period of such deferment at a rate equal to that used in accumulating the reserves for such certificate: *And provided further,* That the Commission may, by rules and regulations or orders in the public interest or for the protection of investors, make provision for any other deferment upon such terms and conditions as it shall prescribe.

(e) Liability of holder to legal action for unpaid amount of certificate

It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, which certificate makes the holder liable to any legal action or proceeding for any unpaid amount on such certificate.

(f) Optional right to paid up certificate in lieu of cash surrender value

It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, (1) unless such face-amount certificate contains a provision or provisions to the effect that the holder shall have an optional right to receive a paid-up certificate in lieu of the then attained cash surrender value provided therein and in the amount of such value plus accumulations thereon at a rate to be specified in the paid-up certificate equal to that used in computing the reserve on the original certificate under subparagraph (A) or (B) of paragraph (2) of subsection (a) of this section, such paid-up certificate to become due and payable at the end of a period equal to the balance of the term of such original certificate before maturity; and during the period prior to maturity such paid-up certificate shall have a cash value upon surrender thereof equal to the then amount of the reserve therefor; and (2) unless such face-amount certificate contains a further provision or provisions to the effect that if the holder be in continuous default in his payments on such certificate for a period of six months without having exercised his option to receive a paid-up certificate, as herein provided, the company at the expiration of such six months shall pay the surrender value in cash if such value is less than $100 or if such value is $100 or more shall issue such paid-up certificate to such holder and such payment or issuance, plus the payment of all other amounts to which he may be then entitled under the original certificate, shall operate to cancel his original certificate: *Provided*, That in lieu of the issuance of a new paid-up certificate the original certificate may be converted into a paid-up certificate with the same effect; and (3) unless, where such certificate provides, in the event of default, for the deferment of payments thereon by the holder or of the due dates of such payments or of the maturity date of the certificate, it shall also provide in effect for the right of reinstatement by the holder of the certificate after default and for an option in the holder, at the time of reinstatement, to make up the payment or payments for the default period next preceding such reinstatement with interest thereon not exceeding 6 per centum per annum, with the same effect as if no such default in making such payments had occurred.

The term "default" as used in this subsection shall, without restricting its usual meaning, include a failure to make a payment or payments as and when provided by the certificate.

(g) Application of section to company issuing certificates only to holders of previously issued certificates

The foregoing provisions of this section shall not apply to a face-amount certificate company which on or before the effective date of this chapter has discontinued the offering of face-amount certificates to the public and issues face-amount certificates only to the holders of certificates previously issued pursuant to an obligation expressed or implied in such certificates.

(h) Declaration or payment of dividends

It shall be unlawful for any registered face-amount certificate company which does not maintain the minimum certificate reserve on all its outstanding face-amount certificates issued prior to the effective date of this chapter, in an aggregate amount calculated and adjusted as provided in this section to declare or pay any dividends on the shares of such company for or during any calendar year which shall exceed one-third of the net earnings for the next preceding calendar year or which shall exceed 10 per centum of the aggregate net earnings for the next preceding five calendar years, whichever is the lesser amount, or any dividend which shall have been forbidden by the Commission pursuant to the provision of the next sentence of this paragraph. At least thirty days before such company shall declare, pay, or distribute any dividend, it shall give the Commission written notice of its intention to declare, pay, or distribute the same; and if at any time it shall appear to the Commission that the declaration, payment or distribution of any dividend for or during any calendar year might impair the financial integrity of such company or its ability to meet its liabilities under its outstanding face-amount certificates, it may by order forbid the declaration, distribution, or payment of any such dividend.

(i) Application of section to certificates issued prior to effective date of section

The foregoing provisions of this section shall apply to all face-amount certificates issued prior to the effective date of this subsection; to the collection or acceptance of any payment on such certificates; to the issuance of face-amount certificates to the holders of such certificates pursuant to an obligation expressed or implied in such certificates; to the provisions of such certificates; to the minimum certificate reserves and deposits maintained with respect thereto; and to the assets that the issuer of such certificate was and is required to have with respect to such certificates. With respect to all face-amount certificates issued after the effective date of this subsection, the provisions of this section shall apply except as hereinafter provided.

(1) Notwithstanding subparagraph (A) of paragraph (2) of subsection (a) of this section, the reserves for each certificate of the installment type shall be based on assumed annual, semiannual, quarterly, or monthly reserve payments according to the manner in which gross payments for any certificate year are made by the holder, which reserve payments shall be sufficient in amount, as and when accumulated at a rate not to exceed 3½ per centum per annum compounded annually, to provide the minimum maturity or face amount of the certificate when due. Such reserve payments may be graduated according to certificate years so that the reserve payment or payments for the first three certificate years shall amount to at least 80 per centum of the required gross annual payment for such years; the reserve payment or payments for the fourth certificate year shall amount to at least 90 per centum of such year's required gross annual payment; the reserve payment or payments for the fifth certificate year shall amount to at least 93 per centum of such year's gross annual payment; and for the sixth and each subsequent certificate year the reserve payment or payments shall amount to at least 96 per centum of each such year's required gross annual payment: *Provided*, That such aggregate reserve payments shall amount to at least 93 per centum of the aggregate gross annual payments required to be made by the holder to obtain the maturity of the certificate. The company may at its option take as loading from the gross payment or payments for a certificate year, as and when made by the certificate holder, an amount or amounts equal in the aggregate for such year to not more than the excess, if any, of the gross payment or payments required to be made by the holder for such year, over and above the percentage of the gross annual payment required herein for such year for reserve purposes. Such loading may be taken by the company prior to or after the setting up of the reserve payment or payments for such year and the reserve payment or payments for such year may be graduated and adjusted to correspond with the amount of the gross payment or payments made by the certificate holder for such year less the loading so taken.

(2) Notwithstanding paragraphs (1) and (2) of subsection (d) of this section, (A) in respect of any certificate of the installment type, during the first certificate year, the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than 80 per centum of the amount of the gross payments made on the certificate; and (B) in respect of any certificate of the installment type, at any time after the expiration of the first certificate year and prior to maturity, the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than the then amount of the reserve for such certificate required by clauses (1) and (2) of subparagraph (D) of paragraph (2) of subsection (a) of this section, less a surrender charge that shall not exceed 2 per centum of the face or maturity amount of the certificate, or 15 per centum of the amount of such reserve, whichever is the lesser, but in no event shall such value be less than 80 per centum of the gross payments made on the certificate. The amount of the surrender value for the end of each certificate year shall be set out in the certificate.

(Aug. 22, 1940, ch. 686, title I, § 28, 54 Stat. 829; Dec. 14, 1970, Pub. L. 91-547, § 17, 84 Stat. 1426.)

REFERENCES IN TEXT

The effective date of this subchapter, referred to in subsecs. (a), (b), (d), (e), and (f), in the original read "the effective date of this title". For effective date of this subchapter, see section 80a-52 of this title.

The effective date of this subchapter, referred to in subsecs. (a)(2)(C), (g), and (h), in the original read "the effective date of this Act", meaning act Aug. 22, 1940, which is classified to this chapter. For effective date of this chapter, see sections 80a-52 and 80b-21 of this title.

Effective date of this subsection, referred to in subsec. (i), as the day upon expiration of 6 months after Dec. 14, 1970, see section 30(3) of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

AMENDMENTS

1970—Subsec. (i). Pub. L. 91-547 added subsec. (i).

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-547, see section 30(3) of Pub. L. 91-547, set out as a note under section 80a-2 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Bankruptcy of face-amount certificate companies, see sections 72 and 107 of Title 11, Bankruptcy.

Organization of face-amount certificate companies by registered face-amount certificate company, see section 80a-12 of this title.

Value as to assets of registered investment companies, definition of, see section 80a-2 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a-2, 80a-12 of this title.

§ 80a-29. Reports and financial statements of investment companies and affiliated persons

(a) Annual report by company

Every registered investment company shall file annually with the Commission such information, documents, and reports as investment companies having securities registered on a national securities exchange are required to file annually pursuant to section 78m(a) of this title and the rules and regulations issued thereunder.

(b) Semi-annual or quarterly filing of information; copies of periodic or interim reports sent to security holders

Every registered investment company shall file with the Commission—

(1) such information and documents (other than financial statements) as the Commission may require, on a semi-annual or quarterly basis, to keep reasonably current the information and documents contained in the registration statement of such company filed under this subchapter; and

(2) copies of every periodic or interim report or similar communication containing financial statements and transmitted to any class of such company's security holders, such copies to be filed not later than ten days after such transmission.

Any information or documents contained in a report or other communication to security holders filed pursuant to paragraph (2) of this subsection may be incorporated by reference in any report subsequently or concurrently filed pursuant to paragraph (1) of this subsection.

(c) Reports under this section in lieu of reports under other provisions of law

The Commission shall issue rules and regulations permitting the filing with the Commission, and with any national securities exchange concerned, of copies of periodic reports, or of extracts therefrom, filed by any registered investment company pursuant to subsections (a) and (b) of this section, in lieu of any reports and documents required of such company under section 78m or 78o(d) of this title.

(d) Semi-annual reports to stockholders

Every registered investment company shall transmit to its stockholders, at least semi-annually, reports containing such of the following information and financial statements or their equivalent, as of a reasonably current date, as the Commission may prescribe by rules and regulations for the protection of investors, which reports shall not be misleading in any material respect in the light of the reports required to be filed pursuant to subsections (a) and (b) of this section:

(1) a balance sheet accompanied by a statement of the aggregate value of investments on the date of such balance sheet;

(2) a list showing the amounts and values of securities owned on the date of such balance sheet;

(3) a statement of income, for the period covered by the report, which shall be itemized at least with respect to each category of income and expense representing more than 5 per centum of total income or expense;

(4) a statement of surplus, which shall be itemized at least with respect to each charge or credit to the surplus account which represents more than 5 per centum of the total charges or credits during the period covered by the report;

(5) a statement of the aggregate remuneration paid by the company during the period covered by the report (A) to all directors and to all members of any advisory board for regular compensation; (B) to each director and to each member of an advisory board for special compensation; (C) to all officers; and (D) to each person of whom any officer or director of the company is an affiliated person; and

(6) a statement of the aggregate dollar amounts of purchases and sales of investment securities, other than Government securities, made during the period covered by the report:

Provided, That if in the judgment of the Commission any item required under this subsection is inapplicable or inappropriate to any specified type or types of investment company, the Commission may by rules and regulations permit in lieu thereof the inclusion of such item of a comparable character as it may deem applicable or appropriate to such type or types of investment company.

(e) Certificate of independent public accountants

Financial statements contained in annual reports required pursuant to subsections (a) and (d) of this section, if required by the rules and regulations of the Commission, shall be accompanied by a certificate of independent public accountants. The certificate of such independent public accountants shall be based upon an audit not less in scope or procedures followed than that which independent public accountants would ordinarily make for the purpose of presenting comprehensive and dependable financial statements, and shall contain such information as the Commission may prescribe, by rules and regulations in the public interest or for the protection of investors, as to the nature and scope of the audit and the findings and opinion of the accountants. Each such report shall state that such independent public accountants have verified securities owned, either by actual examination, or by receipt of a certificate from the custodian, as the Commission may prescribe by rules and regulations.

(f) Duties and liabilities of affiliated persons

Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of outstanding securities (other than short-term paper) of which a registered closed-end company is the issuer or who is an officer, director, member of an advisory board, investment adviser, or affiliated person of an investment adviser of such a company shall in respect of his transactions in any securities of such company (other than short-term paper) be subject to the same duties and liabilities as those imposed by section 78p of this title upon certain beneficial owners, directors, and officers in respect of their transactions in certain equity securities.

(Aug. 22, 1940, ch. 686, title I, § 30, 54 Stat. 836.)

REFERENCES IN TEXT

"This subchapter", referred to in subsec. (b)(1), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Authority of commission as to reports, etc., to be filed or accounting policies, see section 80a-2 of this title.

Notice of opportunity to file or correct report after failure to file or defective filing, see section 80a-8 of this title.

Preservation of accounts and records for financial statements, see section 80a-30 of this title.

Reports by registered investment company in lieu of registration statement, see section 80a-24 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a-2, 80a-8, 80a-24, 80a-30 of this title.

§ 80a-30. Accounts and records

(a) Records constituting basis for financial statements; records necessary to record person's transactions with company

Every registered investment company, and every underwriter, broker, dealer, or investment adviser which is a majority-owned subsidiary of such a company, shall maintain and preserve for such period or periods as the Commission may prescribe by rules and regulations, such accounts, books, and other documents as constitute the record forming the basis for financial statements required to be filed pursuant to section 80a-29 of this title, and of the auditor's certificates relating thereto. Every investment adviser not a majority-owned subsidiary of, and every depositor of any registered investment company, and every principal underwriter for any registered investment company other than a closed-end company, shall maintain and preserve for such period or periods as the Commission shall prescribe by rules and regulations, such accounts, books, and other documents as are necessary or appropriate to record such person's transactions with such registered company.

(b) Examination of records by Commission

All accounts, books, and other records, required to be maintained and preserved by any person pursuant to subsection (a) of this section, shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. Any such person shall furnish to the Commission, within such reasonable time as the Commission may prescribe, copies of or extracts from such records which may be prepared without undue effort, expense, or delay, as the Commission may by order require.

(c) Uniformity in accounting policies

The Commission may, in the public interest or for the protection of investors, issue rules and regulations providing for a reasonable degree of uniformity in the accounting policies and principles to be followed by registered investment companies in maintaining their accounting records and in preparing financial statements required pursuant to this subchapter.

(d) Application for exemption from provisions of section

The Commission, upon application made by any registered investment company, may by order exempt a specific transaction or transactions from the provisions of any rule or regulation made pursuant to subsection (c) of this section, if the Commission finds that such rule or regulation should not reasonably be applied to such transaction.

(Aug. 22, 1940, ch. 686, title I, § 31, 54 Stat. 838.)

REFERENCES IN TEXT

"This subchapter", referred to in subsec. (c), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Authority of commission as to reports, etc., to be filed or accounting policies, see section 80a-2 of this title.

False statements in accounts or records, penalty, see section 80a-48 of this title.

Falsification of reports and records, see section 80a-33 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a-2, 80a-33, 80a-48 of this title.

§ 80a-31. Accountants and auditors

(a) Selection of accountant

It shall be unlawful for any registered management company or registered face-amount certificate company to file with the Commission any financial statement signed or certified by an independent public accountant, unless—

(1) such accountant shall have been selected at a meeting held within thirty days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year by the vote, cast in person, of a majority of those members of the board of directors who are not interested persons of such registered company;

(2) such selection shall have been submitted for ratification or rejection at the next succeeding annual meeting of stockholders if such meeting be held, except that any vacancy occurring between annual meetings, due to the death or resignation of the accountant, may be filled by the vote of a majority of those members of the board of directors who are not interested persons of such registered company, cast in person at a meeting called for the purpose of voting on such action;

(3) the employment of such accountant shall have been conditioned upon the right of the company by vote of a majority of the outstanding voting securities at any meeting called for the purpose to terminate such employment forthwith without any penalty; and

(4) such certificate or report of such accountant shall be addressed both to the board of directors of such registered company and to the security holders thereof.

If the selection of an accountant has been rejected pursuant to paragraph (2) or his employment terminated pursuant to paragraph (3), the vacancy so occurring may be filled by a vote of a majority of the outstanding voting securities, either at the meeting at which the rejection or termination occurred or, if not so filled, at a subsequent meeting which shall be called for the purpose. In the case of a common-law trust of the character described in section 80a-16(c) of this title, no ratification of the employment of such accountant shall be required but such employment may be terminated and such accountant removed by action of the holders of record of a majority of the outstanding shares of beneficial interest in such trust in the same manner as is provided in section 80a-16(c) of this title in respect of the removal of a trustee, and all the provisions therein contained as to the calling of a meeting shall be applicable. In the event of such termination and removal, the vacancy so occurring may be filled by action of the holders of record of a majority of the shares of beneficial interest either at the meeting, if any, at which such termination and removal occurs, or by instruments in writing filed with the custodian, or if not so filed within a reasonable time then at a subsequent meeting which shall be called by the trustees for the purpose. The provisions of paragraph (42) of section 80a-2(a) of this title as to a majority shall be applicable to the vote cast at any meeting of the shareholders of such a trust held pursuant to this subsection.

(b) Selection of controller or other principal accounting officer

No registered management company or registered face-amount certificate company shall file with the Commission any financial statement in the preparation of which the controller or other principal accounting officer or employee of such company participated, unless such controller, officer or employee was selected, either by vote of the holders of such company's voting securities at the last annual meeting of such security holders, or by the board of directors of such company.

(c) Reports of accountants and auditors

The Commission is authorized, by rules and regulations or order in the public interest or for the protection of investors, to require accountants and auditors to keep reports, work sheets, and other documents and papers relating to registered investment companies for such period or periods as the Commission may prescribe, and to make the same available for inspection by the Commission or any member or representative thereof.

(Aug. 22, 1940, ch. 686, title I, § 32, 54 Stat. 838; Dec. 14, 1970, Pub. L. 91-547, § 18, 84 Stat. 1427; June 4, 1975, Pub. L. 94-29, § 28(4), 89 Stat. 165.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 94-29 substituted "section 80a-16(c) of this title" for "section 80a-16(b) of this title".

1970—Subsec. (a). Pub. L. 91-547 deleted introductory text "After one year from the effective date of this subchapter," and substituted "It" for "it"; inserted "the vote, cast in person, of" preceding "a majority" and substituted "interested persons of" for "investment advisers of, or affiliated persons of an investment adviser of, or officers or employees of," in par. (1); inserted "the vote of a majority of those members of" preceding and "who are not interested persons of such registered company, cast in person at a meeting called for the purpose of voting on such action" following "the board of directors" in par. (2); substituted period for colon in par. (4); and in text following par. (4), substituted "if not so filled," for "if not so filled then" and "if not so filed" for "if not so filled", and substituted reference to par. (42) for par. (40) of section 80a-2(a) of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment of subsec. (a) of this section by Pub. L. 91-547, see section 30(1) of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Destruction, etc., of accounts, books, etc., see section 80a-33 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a-33 of this title.

§ 80a-32. Filing of documents with Commission in civil actions

Every registered investment company which is a party and every affiliated person of such company who is a party defendant to any action or claim by a registered investment company or a security holder thereof in a derivative or representative capacity against an officer, director, investment adviser, trustee, or depositor of such company, shall file with the Commission, unless already so filed, (1) a copy of all pleadings, verdicts, or judgments filed with the court or served in connection with such action or claim, (2) a copy of any proposed settlement, compromise, or discontinuance of such action, and (3) a copy of such motions, transcripts, or other documents filed in or issued by the court or served in connection with such action or claim as may be requested in writing by the Commission. If any document referred to in clause (1) or (2)—

(A) is delivered to such company or party defendant, such document shall be filed with the Commission not later than ten days after the receipt thereof; or

(B) is filed in such court or delivered by such company or party defendant, such documents shall be filed with the Commission not later than five days after such filing or delivery.

(Aug. 22, 1940, ch. 686, title I, § 33, 54 Stat. 839; Dec. 14, 1970, Pub. L. 91-547, § 19, 84 Stat. 1428.)

AMENDMENTS

1970—Pub. L. 91-547 in revising the text inserted provision for party acting in representative capacity and substituted provisions for prompt filing with the Commission of copies of all pleadings, verdicts, judgments, settlements, compromises, or discontinuances served or filed in suits by a registered investment company or a security holder thereof against an officer, director, investment adviser, trustee, or depositor of such company and of copies of motions, transcripts, or other documents if the Commission requests them for prior requirement that registered companies and their affiliated persons who are defendants in derivative suits involving an alleged breach of official duty transmit to the Commission copies of the pleadings and the record in such actions after a settlement or compromise of the action has been approved by a court of competent jurisdiction or a verdict or final judgment on the merits has been rendered, Commission use of information, and nondisclosure of identity of persons.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80a-33. Destruction and falsification of reports and records

(a) It shall be unlawful for any person, except as permitted by rule, regulation, or order of the Commission, willfully to destroy, mutilate, or alter any account, book, or other document the preservation of which has been required pursuant to section 80a-30(a) or 80a-31(c) of this title.

(b) It shall be unlawful for any person to make any untrue statement of a material fact in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to this subchapter or the keeping of which is required pursuant to section 80a-30 (a) of this title. It shall be unlawful for any person so filing, transmitting, or keeping any such document to omit to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading. For the purposes of this subsection, any part of any such document which is signed or certified by an accountant or auditor in his capacity as such shall be deemed to be made, filed, transmitted, or kept by such accountant or auditor, as well as by the person filing, transmitting, or keeping the complete document.

(Aug. 22, 1940, ch. 686, title I, § 34, 54 Stat. 840.)

REFERENCES IN TEXT

"This subchapter", referred to in subsec. (b), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Correction of defective report, see section 80a-8 of this title.

Venue of criminal proceedings, see section 80a-43 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a-8, 80a-43 of this title.

§ 80a-34. Unlawful representations and names

(a) Unlawful representation of guarantee by United States or agency thereof

It shall be unlawful for any person, in issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company has been guaranteed, sponsored, recommended, or approved by the United States or any agency or officer thereof.

(b) Unlawful representation of sponsorship by United States or agency thereof

It shall be unlawful for any person registered under any section of this subchapter, to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved, or that his abilities or qualifications have in any respect been passed upon by the United States or any agency or officer thereof.

(c) Statement of registration under securities provisions

No provision of subsection (a) or (b) of this section shall be construed to prohibit a statement that a person or security is registered under this chapter, the Securities Act of 1933 [15 U.S.C. 77a et seq.], or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], if such statement is true in fact and if the effect of such registration is not misrepresented.

(d) Deceptive or misleading names for investment companies

It shall be unlawful for any registered investment company hereafter to adopt as a part of the name or title of such company, or of any security of which it is the issuer, any word or words which the Commission finds and by order declares to be deceptive or misleading. The Commission is authorized to bring an action in the proper district court of the United States or United States court of any Territory or other place subject to the jurisdiction of the United States alleging that the name or title of any registered investment company, or of any security which it has issued, is materially deceptive or misleading. If the court finds that the Commission's allegations in this respect, taking into consideration the history of the investment company and the length of time which it may have used any such name or title, are established, the court shall enjoin such investment company from continuing to use any such name or title.

(Aug. 22, 1940, ch. 686, title I, § 35, 54 Stat. 840.)

REFERENCES IN TEXT

"This subchapter", referred to in subsec. (b), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

"This chapter", referred to in subsec. (c), in the original read "this Act". See References in Text note set out under section 80a-12 of this title.

The Securities Act of 1933, referred to in subsec. (c), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

The Securities Exchange Act of 1934, referred to in subsec. (c), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80a-35. Breach of fiduciary duty

(a) Civil actions by Commission; jurisdiction; allegations; injunctive or other relief

The Commission is authorized to bring an action in the proper district court of the United States, or in the United States court of any territory or other place subject to the jurisdiction of the United States, alleging that a person serving or acting in one or more of the following capacities has engaged within five years of the commencement of the action or is about to engage in any act or practice constituting a breach of fiduciary duty involving personal misconduct in respect of any registered investment company for which such person so serves or acts—

(1) as officer, director, member of any advisory board, investment adviser, or depositor; or

(2) as principal underwriter, if such registered company is an open-end company, unit investment trust, or face-amount certificate company.

If such allegations are established, the court may enjoin such persons from acting in any or all such capacities either permanently or temporarily and award such injunctive or other relief against such person as may be reasonable and appropriate in the circumstances, having due regard to the protection of investors and to the effectuation of the policies declared in section 80a-1(b) of this title.

(b) Compensation or payments as basis of fiduciary duty; civil actions by Commission or security holder; burden of proof; judicial consideration of director or shareholder approval; persons liable; extent of liability; exempted transactions; jurisdiction; finding restriction

For the purposes of this subsection, the investment adviser of a registered investment company shall be deemed to have a fiduciary duty with respect to the receipt of compensation for services, or of payments of a material nature, paid by such registered investment company or by the security holders thereof, to such investment adviser or any affiliated person of such investment adviser. An action may be brought under this subsection by the Commission, or by a security holder of such registered investment company on behalf of such company, against such investment adviser, or any affiliated person of such investment adviser, or any other person enumerated in subsection (a) of this section who has a fiduciary duty concerning such compensation or payments, for breach of fiduciary duty in respect of such compensation or payments paid by such registered investment company or by the security holders thereof to such investment adviser or person. With respect to any such action the following provisions shall apply:

(1) It shall not be necessary to allege or prove that any defendant engaged in personal misconduct, and the plaintiff shall have the burden of proving a breach of fiduciary duty.

(2) In any such action approval by the board of directors of such investment company of such compensation or payments, or of contracts or other arrangements providing for such compensation or payments, and ratification or approval of such compensation or payments, or of contracts or other arrangements providing for such compensation or payments, by the shareholders of such investment company, shall be given such consideration by the court as is deemed appropriate under all the circumstances.

(3) No such action shall be brought or maintained against any person other than the recipient of such compensation or payments, and no damages or other relief shall be granted against any person other than the recipient of such compensation or payments. No award of damages shall be recoverable for any period prior to one year before the action was instituted. Any award of damages against such recipient shall be limited to the actual damages resulting from the breach of fiduciary duty and shall in no event exceed the amount of compensation or payment received from such investment company, or the security holders thereof, by such recipient.

(4) This subsection shall not apply to compensation or payments made in connection with transactions subject to section 80a-17 of this title, or rules, regulations, or orders thereunder, or to sales loans for the acquisition of any security issued by a registered investment company.

(5) Any action pursuant to this subsection may be brought only in an appropriate district court of the United States.

(6) No finding by a court with respect to a breach of fiduciary duty under this subsection shall be made a basis (A) for a finding of a violation of this subchapter for the purposes of sections 80a-9 and 80a-48 of this title, section 78o of this title, or section 80b-3 of this title, or (B) for an injunction to prohibit any person from serving in any of the capacities enumerated in subsection (a) of this section.

(c) Corporate or other trustees performing functions of investment advisers

For the purposes of subsections (a) and (b) of this section, the term "investment adviser" includes a corporate or other trustee performing the functions of an investment adviser.

(Aug. 22, 1940, ch. 686, title I, § 36, 54 Stat. 841; Dec. 14, 1970, Pub. L. 91-547, § 20, 84 Stat. 1428; June 4, 1975, Pub. L. 94-29, § 28(7), 89 Stat. 166.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b)(6), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

CODIFICATION

The subsection added by Pub. L. 94-29 (see 1975 Amendment note hereunder) was designated in the original as "(d)". For purposes of codification that designation has been changed from "(d)" to "(c)" and within the subsection as so redesignated "subsections (a) through (c) of this section" has been changed to "subsections (a) and (b) of this section".

AMENDMENTS

1975—Subsec. (c). Pub. L. 94-29 added subsec. (c).

1970—Subsec. (a). Pub. L. 91-547 designated existing provisions as subsec. (a) and substituted in first sentence "has engaged within five years of the commencement of the action or is about to engage in any act or practice constituting a breach of fiduciary duty involving personal misconduct" for "has been guilty, after August 22, 1940, and within five years of the commencement of the action, of gross misconduct or gross abuse of trust" and second sentence reading "If such allegations are established, the court may enjoin such persons from acting in any or all such capacities either permanently or temporarily and award such injunctive or other relief against such person as may be reasonable and appropriate in the circumstances, having due regard to the protection of investors and to the effectuation of the policies declared in section 80a-1(b) of this title" for prior provision reading "If the Commission's allegations of such gross misconduct or gross abuse of trust are established, the court shall enjoin such person from acting in such capacity or capacities either permanently or for such period of time as it in its discretion shall deem appropriate."

Subsec. (b). Pub. L. 91-547 added subsec. (b).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-547, see section 30, introductory text and par. (4), of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80a-43 of this title.

§ 80a-36. Larceny and embezzlement

Whoever steals, unlawfully abstracts, unlawfully and willfully converts to his own use or to the use of another, or embezzles any of the moneys, funds, securities, credits, property, or assets of any registered investment company shall be deemed guilty of a crime, and upon conviction thereof shall be subject to the penalties provided in section 80a-48 of this title. A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts.

(Aug. 22, 1940, ch. 686, title I, § 37, 54 Stat. 841.)

§ 80a-37. Rules, regulations, and orders

(a) Powers of Commission

The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in this subchapter, including rules and regulations defining accounting, technical, and trade terms used in this subchapter, and prescribing the form or forms in which information required in registration statements, applications, and reports to the Commission shall be set forth. For the purposes of its rules or regulations the Commission may classify persons, securities, and other matters within its jurisdiction and prescribe different requirements for different classes of persons, securities, or matters.

(b) Filing of information and documents

The Commission, by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of investors, may authorize the filing of any information or documents required to be filed with the Commission under this subchapter, subchapter II of this chapter, the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.], or the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.], by incorporating by reference any information or documents theretofore or concurrently filed with the Commission under this subchapter or any of such Acts.

(c) Good faith conformance with rules, regulations, and orders

No provision of this subchapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, by amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(Aug. 22, 1940, ch. 686, title I, § 38, 54 Stat. 841.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (b), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

The Securities Exchange Act of 1934, referred to in subsec. (b), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

The Public Utility Holding Company Act of 1935, referred to in subsec. (b), is act Aug. 26, 1935, ch. 687, title I, 49 Stat. 838, which is classified generally to chapter 2C (§ 79 et seq.) of this title. For complete classification of this Act to the Code, see section 79 of this title and Tables volume.

The Trust Indenture Act of 1939, referred to in subsec. (b), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, which is classified generally to subchapter III (§ 77aaa et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77aaa of this title and Tables volume.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Rules and regulations under—
- Investment Advisers Act of 1940, see section 80b-11 of this title.
- Public Utility Holding Company Act of 1935, see section 79t of this title.
- Securities Act of 1933, see section 77s of this title.
- Securities Exchange Act of 1934, see sections 78c and 78w of this title.
- Trust Indenture Act of 1939, see section 77sss of this title.

§ 80a-38. Procedure for issuance of rules and regulations

Subject to the provisions of chapter 15 of title 44 and regulations prescribed under the authority thereof, the rules and regulations of the Commission under this subchapter, and amendments thereof, shall be effective upon publication in the manner which the Commission shall prescribe, or upon such later date as may be provided in such rules and regulations.

(Aug. 22, 1940, ch. 686, title I, § 39, 54 Stat. 842.)

REFERENCES IN TEXT

"This subchapter", referred to in the text, in the original read "this title". See References in Text note set out under section 80a-1 of this title.

CODIFICATION

"Chapter 15 of title 44" was substituted for "the Federal Register Act" on authority of section 2(b) of Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1305, section 1 of which enacted Title 44, Public Printing and Documents.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80a-39. Procedure for issuance of orders

(a) Notice and hearing

Orders of the Commission under this subchapter shall be issued only after appropriate notice and opportunity for hearing. Notice to the parties to a proceeding before the Commission shall be given by personal service upon each party or by registered mail or certified mail or confirmed telegraphic notice to the party's last known business address. Notice to interested persons, if any, other than parties may be given in the same manner or by publication in the Federal Register.

(b) Application verified under oath admissible as evidence

The Commission may provide, by appropriate rules or regulations, that an application verified under oath may be admissible in evidence in a proceeding before the Commission and that the record in such a proceeding may consist, in whole or in part, of such application.

(c) Parties

In any proceeding before the Commission, the Commission, in accordance with such rules and regulations as it may prescribe, shall admit as a party any interested State or State agency, and may admit as a party any representative of interested security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors.

(Aug. 22, 1940, ch. 686, title I, § 40, 54 Stat. 842; June 11, 1960, Pub. L. 86-507, § 1(15), 74 Stat. 201.)

REFERENCES IN TEXT

"This subchapter", referred to in subsec. (a), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86-507 inserted "or certified mail" following "registered mail".

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80a-40. Hearings by Commission

Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

(Aug. 22, 1940, ch. 686, title I, § 41, 54 Stat. 842.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Hearings by Commission under—
- Investment Advisers Act of 1940, see section 80b-12 of this title.
- Public Utility Holding Company Act of 1935, see section 79s of this title.
- Securities Act of 1933, see section 77u of this title.
- Securities Exchange Act of 1934, see section 78v of this title.
- Trust Indenture Act of 1939, see section 77ttt of this title.

§ 80a-41. Enforcement of subchapter

(a) Investigation

The Commission may make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this subchapter or of any rule, regulation, or order hereunder, or to determine whether any action in any court or any proceeding before the Commission shall be instituted under this subchapter against a particular person or persons, or with respect to a particular transaction or transactions. The Commission shall permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated.

(b) Administration of oaths and affirmations, subpena of witnesses, etc.

For the purpose of any investigation or any other proceeding under this subchapter, any member of the Commission, or any officer thereof designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which are relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

(c) Jurisdiction of courts of United States

In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who without just cause shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(d) Repealed. Pub. L. 91-452, title II, § 215, Oct. 15, 1970, 84 Stat. 929

(e) Action for injunction

Whenever it shall appear to the Commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this subchapter, or of any rule, regulation, or order hereunder, it may in its discretion bring an action in the proper district court of the United States, or the proper United States court of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this subchapter or any rule, regulation, or order hereunder. Upon a showing that such person has engaged or is about to engage in any such act or practice, a permanent or temporary injunction or decree or restraining order shall be granted without bond. In any proceeding under this subsection to enforce compliance with section 80a-7 of this title, the court as a court of equity may, to the extent it deems necessary or appropriate, take exclusive jurisdiction and possession of the investment company or companies involved and the books, records, and assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, who with the approval of the court shall have power to dispose of any or all of such assets, subject to such terms and conditions as the court may prescribe. The Commission may transmit such evidence as may be available concerning any violation of the provisions of this subchapter or of any rule, regulation, or order thereunder, to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this subchapter.

(Aug. 22, 1940, ch. 686, title I, § 42, 54 Stat. 842; Oct. 15, 1970, Pub. L. 91-452, title II, § 215, 84 Stat. 929.)

REFERENCES IN TEXT

"This subchapter", referred to in subsecs. (a), (b), and (e), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

AMENDMENTS

1970—Subsec. (d). Pub. L. 91-452 struck out subsec. (d) which related to the immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

SAVINGS PROVISION

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

CROSS REFERENCES

Enforcement under—

Investment Advisers Act of 1940, see section 80b-9 of this title.

Public Utility Holding Company Act of 1935, see section 79r of this title.

Securities Act of 1933, see sections 77s, 77t and 77v of this title.

Securities Exchange Act of 1934, see section 78u of this title.

Trust Indenture Act of 1939, see sections 77uuu and 77vvv of this title.

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

§ 80a-42. Court review of orders

(a) Any person or party aggrieved by an order issued by the Commission under this subchapter may obtain a review of such order in the United States court of appeals within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) The commencement of proceedings under subsection (a) of this section to review an order of the Commission issued under section 80a-8(e) of this title shall operate as a stay of the Commission's order unless the court otherwise orders. The commencement of proceedings under subsection (a) of this section to review an order of the Commission issued under any provision of this subchapter other than section 80a-8(e) of this title shall not operate as a stay of the Commission's order unless the court specifically so orders.

(Aug. 22, 1940, ch. 686, title I, § 43, 54 Stat. 844; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Aug. 28, 1958, Pub. L. 85-791, § 25, 72 Stat. 949; Dec. 14, 1970, Pub. L. 91-547, § 21, 84 Stat. 1430.)

REFERENCES IN TEXT

"This subchapter", referred to in subsecs. (a) and (b), in the original read "this title". See References in Text note set out under section 80a-1 of this title.

AMENDMENTS

1970—Pub. L. 91-547 substituted reference to "section 1254" for "sections 346 and 347" of title 28.

1958—Subsec. (a). Pub. L. 85-791, in second sentence, substituted "transmitted by the clerk of the court to any member of the Commission or" for "served upon any member of the Commission or upon", substituted "file in the court" for "certify and file in the court a transcript of", and inserted "as provided in section 2112 of title 28" and, in third sentence, substituted "petition" for "transcript", and "jurisdiction, which upon the filing of the record shall be exclusive" for "exclusive jurisdiction".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Review of orders under—
  Investment Advisers Act of 1940, see section 80b-13 of this title.
  Public Utility Holding Company Act of 1935, see section 79x of this title.
  Securities Act of 1933, see section 77i of this title.
  Securities Exchange Act of 1934, see section 78y of this title.
  Trust Indenture Act of 1939, see section 77vvv of this title.

§ 80a-43. Jurisdiction of offenses and suits

The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this subchapter or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this subchapter or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. A criminal proceeding based upon a violation of section 80a-33 of this title, or upon a failure to file a report or other document required to be filed under this subchapter, may be brought in the district wherein the defendant is an inhabitant or maintains his principal office or place of business. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this subchapter or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28. No costs shall be assessed for or against the Commission in any proceeding under this subchapter brought by or against the Commission in any court. The Commission may intervene as a party in any action or suit to enforce any liability or duty created by, or to enjoin any noncompliance with, section 80a-35(b) of this title at any stage of such action or suit prior to final judgment therein.

(Aug. 22, 1940, ch. 686, title I, § 44, 54 Stat. 844; Dec. 14, 1970, Pub. L. 91-547, § 22, 84 Stat. 1430.)

REFERENCES IN TEXT

"This subchapter", referred to in text, in the original read "this title". See References in Text note set out under section 80a-1 of this title.

AMENDMENTS

1970—Pub. L. 91-547 substituted reference to "sections 1254, 1291, 1292, and 1294 of title 28" for "sections 225 and 347 of title 28 and section 7, as amended, of the Act entitled 'An Act to establish a court of appeals for the District of Columbia, approved February 9, 1893'" and provided for Commission intervention as a party in any action or suit to enforce any liability or duty created by, or to enjoin any noncompliance with, section 80a-35(b) of this title at any stage of such action or suit prior to final judgment therein, respectively.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Costs, see rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.
  One form of action, see rule 2.
  Process, see rule 4.

FEDERAL RULES OF CRIMINAL PROCEDURE

Continuation of section under rule 18, see note by Advisory Committee under rule 18, Title 18, Appendix, Crimes and Criminal Procedure.
  Venue, see rules 18 to 22.

CROSS REFERENCES

Jurisdiction of offenses and suits under—
  Investment Advisers Act of 1940, see section 80b-14 of this title.
  Public Utility Holding Company Act of 1935, see section 79y of this title.
  Securities Act of 1933, see section 77v of this title.
  Securities Exchange Act of 1934, see section 78aa of this title.
  Trust Indenture Act of 1939, see section 77vvv of this title.
Venue, see section 1391 et seq. of Title 28, Judiciary and Judicial Procedure.

§ 80a-44. Disclosure of information filed with Commission; copies

(a) The information contained in any registration statement, application, report, or other document filed with the Commission pursuant to any provision of this subchapter or of any rule or regulation thereunder (as distinguished from any information or document transmitted to the Commission) shall be made available to the public, unless and except insofar as the Commission, by rules and regulations upon its own motion, or by order upon application, finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. It shall be unlawful for any member, officer, or employee of the Commission to use for personal benefit, or to disclose to any person other than an official or employee of the United States or of a State, for official use, or for any such official or employee to use for personal benefit, any information contained in any document so filed or transmitted, if such information is not available to the public.

(b) Photostatic or other copies of information contained in documents filed with the Commission under this subchapter and made available to the public shall be furnished any person at such reasonable charge and under such reasonable limitations as the Commission shall prescribe.

(Aug. 22, 1940, ch. 686, title I, § 45, 54 Stat. 845.)

REFERENCES IN TEXT

"This subchapter", referred to in text, in the original read "this title". See References in Text note set out under section 80a-1 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80a-45. Reports by Commission; officers and employees of Commission

(a) The Commission shall submit annually a report to the Congress covering the work of the Commission for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this subchapter as it may find advisable.

(b) For the purposes of this subchapter, the Commission may select, employ, and fix the compensation of such attorneys, examiners, and other experts as shall be necessary for the transaction of the business of the Commission in respect of this subchapter; and the Commission may, subject to the civil service laws, appoint such other officers and employees as are necessary in the execution of the functions of the Commission and fix their salaries in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(Aug. 22, 1940, ch. 686, title I, § 46, 54 Stat. 845; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972.)

REFERENCES IN TEXT

"This subchapter", referred to in text, in the original read "this title". See References in Text note set out under section 80a-1 of this title.

The civil service laws, referred to in subsec. (b), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

CODIFICATION

In subsec. (b), provisions that authorized the Commission to select, employ, and fix the compensation of such attorneys, examiners, and other experts as shall be necessary for the transaction of the business of the Commission in respect of this subchapter "without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States" were omitted as obsolete and superseded.

Such selection and employment are now subject to the civil service laws unless specifically excepted by those laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5, Government Organization and Employees.

As to the compensation of such personnel, sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed Pub. L. 89-554, Sept. 6, 1966, § 8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5. Section 5102 of Title 5 now contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Civil Service Commission to determine the applicability to specific positions and employees.

"Chapter 51 and subchapter III of chapter 53 of title 5" were substituted for "the Classification Act of 1949, as amended" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1949—Act Oct. 28, 1949, struck out "Classification Act of 1923, as amended" and inserted in lieu thereof "Classification Act of 1949".

REPEALS

Act Oct. 28, 1949, ch. 782, § 1106(a), 63 Stat. 972, set out in the credit of this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80a-46. Validity of contracts

(a) Any condition, stipulation, or provision binding any person to waive compliance with any provision of this subchapter or with any rule, regulation, or order thereunder shall be void.

(b) Every contract made in violation of any provision of this subchapter or of any rule, regulation, or order thereunder, and every contract heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this subchapter, or any rule, regulation, or order thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, regulation, or order, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule, regulation, or order.

(Aug. 22, 1940, ch. 686, title I, § 47, 54 Stat. 845.)

References in Text

"This subchapter", referred to in text, in the original read "this title". See References in Text note set out under section 80a-1 of this title.

§ 80a-47. Procuring violation of subchapter; obstructing compliance

(a) It shall be unlawful for any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do under the provisions of this subchapter or any rule, regulation, or order thereunder.

(b) It shall be unlawful for any person without just cause to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, record, or account required to be made, filed, or kept under any provision of this subchapter or any rule, regulation, or order thereunder.

(Aug. 22, 1940, ch. 686, title I, § 48, 54 Stat. 846.)

References in Text

"This subchapter", referred to in text, in the original read "this title". See References in Text note set out under section 80a-1 of this title.

Cross References

Liability of controlling persons under—
  Public Utility Holding Company Act of 1935, see section 79z-1 of this title.
  Securities Act of 1933, see section 77o of this title.
  Securities Exchange Act of 1934, see section 78t of this title.

§ 80a-48. Penalties

Any person who willfully violates any provision of this subchapter or of any rule, regulation, or order hereunder, or any person who willfully in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to this subchapter or the keeping of which is required pursuant to section 80a-30(a) of this title makes any untrue statement of a material fact or omits to state any material fact necessary in order to prevent the statements made therein from being materially misleading in the light of the circumstances under which they were made, shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both; but no person shall be convicted under this section for the violation of any rule, regulation, or order if he proves that he had no actual knowledge of such rule, regulation, or order.

(Aug. 22, 1940, ch. 686, title I, § 49, 54 Stat. 846; June 4, 1975, Pub. L. 94-29, § 27(e), 89 Stat. 163.)

References in Text

"This subchapter", referred to in text, in the original read "this title". See References in Text note set out under section 80a-1 of this title.

Amendments

1975—Pub. L. 94-29 substituted "or imprisoned not more than five years" for "or imprisoned not more than two years".

Effective Date of 1975 Amendment

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

Cross References

Larceny and embezzlement as subject to the penalties provided in this section, see section 80a-36 of this title.

Section Referred to in Other Sections

This section is referred to in sections 80a-35, 80a-36 of this title.

§ 80a-49. Construction with other laws

Except where specific provision is made to the contrary, nothing in this subchapter shall affect (1) the jurisdiction of the Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.], the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.], or subchapter II of this chapter, over any person, security, or transaction, or (2) the rights, obligations, duties, or liabilities of any person under such Acts; nor shall anything in this subchapter affect the jurisdiction of any other commission, board, agency, or officer of the United States or of any State or political subdivision of any State, over any person, security, or transaction, insofar as such jurisdiction does not conflict with any provision of this subchapter or of any rule, regulation, or order hereunder.

(Aug. 22, 1940, ch. 686, title I, § 50, 54 Stat. 846.)

References in Text

This subchapter, referred to in text, in the original read "this title". See References in Text note set out under section 80a-1 of this title.

The Securities Act of 1933, referred to in text, is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

The Securities Exchange Act of 1934, referred to in text, is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

The Public Utility Holding Company Act of 1935, referred to in text, is act Aug. 26, 1935, ch. 687, title I, 49 Stat. 838, which is classified generally to chapter 2C (§ 79 et seq.) of this title. For complete classification of this Act to the Code, see section 79 of this title and Tables volume.

The Trust Indenture Act of 1939, referred to in text, is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, which is classified generally to subchapter III (§ 77aaa et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77aaa of this title and Tables volume.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80a-50. Separability of provisions

If any provision of this subchapter or any provision incorporated in this subchapter by reference, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this subchapter and the application of any such provision to person or circumstances other than those as to which it is held invalid shall not be affected thereby.

(Aug. 22, 1940, ch. 686, title I, § 51, 54 Stat. 846.)

REFERENCES IN TEXT

"This subchapter", referred to in text, in the original read "this title". See References in Text note set out under section 80a-1 of this title.

§ 80a-51. Short title

This subchapter may be cited as the "Investment Company Act of 1940".

(Aug. 22, 1940, ch. 686, title I, § 52, 54 Stat. 847.)

REFERENCES IN TEXT

"This subchapter", referred to in text, in the original read "this title". See References in Text note set out under section 80a-1 of this title.

SHORT TITLE

Section 1 of Pub. L. 91-547, Dec. 14, 1970, 84 Stat. 1413, provided: "That this Act [which enacted section 80b-6a of this title, amended sections 77b, 77c, 78c, 78*l*, 80a-2, 80a-3, 80a-8 to 80a-13, 80a-15, 80a-17 to 80a-19, 80a-22, 80a-24 to 80a-28, 80a-31, 80a-32, 80a-35, 80a-42, 80a-43, 80b-2, 80b-3, and 80b-5 of this title, and enacted provisions set out as notes under sections 77c and 80a-2 of this title] may be cited as the 'Investment Company amendments Act of 1970'."

§ 80a-52. Effective date

The effective date of the provisions of this subchapter, so far as the same relate to face-amount certificates or to face-amount certificate companies, is January 1, 1941: *Provided, however,* That any such face-amount certificate company may register prior to said date, as provided by section 80a-8 of this title, and such registration shall not operate to change or affect said effective date as to any such company or any face-amount certificates issued by it. The effective date of provisions hereof, insofar as the same do not apply to face-amount certificates or face-amount certificate companies is November 1, 1940. Except as herein otherwise provided, every provision of this subchapter shall take effect on November 1, 1940.

(Aug. 22, 1940, ch. 686, title I, § 53, 54 Stat. 847.)

REFERENCES IN TEXT

"This subchapter", referred to in text in the original read "this title". See References in Text note set out under section 80a-1 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 30 of Pub. L. 91-547 provided that:

"This Act [see Short Title note set out under section 80a-51 of this title] shall take effect on the date of its enactment [Dec. 14, 1970], except that—

"(1) sections (5)(a), (b), and (c); 8; 9(a); 11; 18; 24(a); and 25 (amending sections 10(a), (b), and (c) [section 80a-10(a), (b), and (c)]; 15 [section 80a-15]; 17(f) [section 80a-17(f)]; 19 [section 80a-19]; and 32(a) of the Investment Company Act of 1940 [section 80a-31(a)]; and sections 203(b) and 205 of the Investment Advisers Act of 1940 [sections 80b-3(b) and 80b-5 of this title], respectively) shall take effect upon the expiration of one year after the date of enactment of this Act [Dec. 14, 1970];

"(2) that part of section 5(d) which substitutes 'interested persons' for 'affiliated persons' in section 10(d) of the Investment Company Act of 1940 [section 80a-10(d) of this title] shall take effect upon the expiration of one year after the date of enactment of this Act [Dec. 14, 1970];

"(3) sections 16 and 17 (amending section 27 and 28 of the Investment Company Act of 1940 [sections 80a-27 and 80a-28 of this title]) shall take effect upon the expiration of six months after the date of enactment of this Act [Dec. 14, 1970]; and

"(4) that part of section 20 which adds a subsection (b) to section 36 of the Investment Company Act of 1940 [section 80a-35 of this title] shall take effect upon the expiration of eighteen months after the date of enactment of this Act [Dec. 14, 1970]."

CROSS REFERENCES

Corporation of Foreign Bondholders Act, 1933, see section 77mm of this title.

Investment Advisers Act of 1940, see section 80b-20 of this title.

Public Utility Holding Company Act of 1935, see section 79 of this title.

Securities Act of 1933, see section 77a of this title.

Securities Exchange Act of 1934, see section 78a of this title.

Trust Indenture Act of 1939, see section 77aaa of this title.

SUBCHAPTER II—INVESTMENT ADVISERS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 78c, 78*o*, 78s, 78*u*, 80a-9, 80a-10, 80a-12, 80a-37, 80a-49 of this title; title 29 section 1002.

§ 80b-1. Findings

Upon the basis of facts disclosed by the record and report of the Securities and Exchange Commission made pursuant to section 79z-4 of this title, and facts otherwise disclosed and ascertained, it is found that investment advisers are of national concern, in that, among other things—

(1) their advice, counsel, publications, writings, analyses, and reports are furnished and distributed, and their contracts, subscription agreements, and other arrangements with clients are negotiated and performed, by the use of the mails and means and instrumentalities of interstate commerce;

(2) their advice, counsel, publications, writings, analyses, and reports customarily relate to the purchase and sale of securities traded on national securities exchanges and in interstate over-the-counter markets, securities issued by companies engaged in business in interstate commerce, and securities issued by national banks and member banks of the Federal Reserve System; and

(3) the foregoing transactions occur in such volume as substantially to affect interstate commerce, national securities exchanges, and other securities markets, the national banking system and the national economy.

(Aug. 22, 1940, ch. 686, title II, § 201, 54 Stat. 847.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Findings and declaration of policy under Investment Company Act of 1940, see section 80a-1 of this title.

Necessity for control of holding companies, see section 79a of this title.

Necessity for regulation under—
- Securities Exchange Act of 1934, see section 78b of this title.
- Trust Indenture Act of 1939, see section 77bbb of this title.

§ 80b-2. Definitions

(a) When used in this subchapter, unless the context otherwise requires—

(1) "Assignment" includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract shall be deemed to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after such admission, shall be only a minority of the members and shall have only a minority interest in the business.

(2) "Bank" means (A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this subchapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(3) "Broker" means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.

(4) "Commission" means the Securities and Exchange Commission.

(5) "Company" means a corporation, a partnership, an association, a joint-stock company, a trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in bankruptcy, or similar official, or any liquidating agent for any of the foregoing, in his capacity as such.

(6) "Convicted" includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

(7) "Dealer" means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.

(8) "Director" means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.

(9) "Exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

(10) "Interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof.

(11) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include (A) a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.] which is not an investment company; (B) any lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of his profession; (C) any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor; (D) the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; (E) any person whose advice, analyses or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which

shall have been designated by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(12)], as exempted securities for the purposes of that Act [15 U.S.C. 78a et seq.]; or (F) such other persons not within the intent of this paragraph, as the Commission may designate by rules and regulations or order.

(12) "Investment company", affiliated person, and "insurance company" have the same meanings as in the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.]. "Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.

(13) "Investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

(14) "Means or instrumentality of interstate commerce" includes any facility of a national securities exchange.

(15) "National securities exchange" means an exchange registered under section 6 of the Securities Exchange Act of 1934 [15 U.S.C. 78f].

(16) "Person" means a natural person or a company.

(17) The term "person associated with an investment adviser" means any partner, officer, or director of such investment adviser (or any person performing similar functions), or any person directly or indirectly controlling or controlled by such investment adviser, including any employee of such investment adviser, except that for the purposes of section 80b-3 of this title (other than subsection (f) thereof), persons associated with an investment adviser whose functions are clerical or ministerial shall not be included in the meaning of such term. The Commission may by rules and regulations classify, for the purposes of any portion of portions of this subchapter, persons, including employees controlled by an investment adviser.

(18) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, or warrant or right to subscribe to or purchase any of the foregoing.

(19) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Canal Zone, the Virgin Islands, or any other possession of the United States.

(20) "Underwriter" means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor's or seller's commission. As used in this paragraph the term "issuer" shall include in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(21) "Securities Act of 1933" [15 U.S.C. 77a et seq.], "Securities Exchange Act of 1934" [15 U.S.C. 78a et seq.], "Public Utility Holding Company Act of 1935" [15 U.S.C. 79 et seq.], and "Trust Indenture Act of 1939" [15 U.S.C. 77aaa et seq.], mean those Acts, respectively, as heretofore or hereafter amended.

(b) No provision in this subchapter shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(Aug. 22, 1940, ch. 686, title II, § 202, 54 Stat. 847; June 25, 1959, Pub. L. 86-70, § 12(c), 73 Stat. 143; July 12, 1960, Pub. L. 86-624, § 7(d), 74 Stat. 412; Sept. 13, 1960, Pub. L. 86-750, § 1, 74 Stat. 885; July 1, 1966, Pub. L. 89-485, § 13(j), 80 Stat. 243; Dec. 14, 1970, Pub. L. 91-547, § 23, 84 Stat. 1430.)

REFERENCES IN TEXT

The Bank Holding Company Act of 1956, referred to in subsec. (a)(11)(A), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§ 1841 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of Title 12 and Tables volume.

The Investment Company Act of 1940, referred to in subsec. (a)(12), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§ 80a-1 et seq.) of this chapter. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables volume.

The Securities Act of 1933, referred to in subsec. (a)(21), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

The Securities Exchange Act of 1934, referred to in subsec. (a)(21), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

The Public Utility Holding Company Act of 1935, referred to in subsec. (a)(21), is act Aug. 26, 1935, ch. 687, title I, 49 Stat. 838, which is classified generally to chapter 2C (§ 79 et seq.) of this title. For complete classification of this Act to the Code, see section 79 of this title and Tables volume.

The Trust Indenture Act of 1939, referred to in subsec. (a)(21), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, which is classified generally to subchapter III (§ 77aaa et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77aaa of this title and Tables volume.

AMENDMENTS

1970—Subsec. (a)(2). Pub. L. 91-547, § 23(1), substituted "under the authority of the Comptroller of the Currency" for "under section 248(k) of Title 12".

Subsec. (a)(17). Pub. L. 91-547, § 23(2), added par. (17). Former par. (17) redesignated (18).

Subsec. (a)(18) to (21). Pub. L. 91-547, § 23(2), redesignated former pars. (17) to (20) as (18) to (21).

1966—Subsec. (a)(11)(A). Pub. L. 89-485 substituted "bank holding company as defined in the Bank Holding Company Act of 1956" for "holding company affiliate, as defined in the Banking Act of 1933".

1960—Subsec. (a)(12). Pub. L. 86-750, § 1(a), substituted the definition of "control" as "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company" for its prior definition which was the same as in the Investment Company Act of 1940.

Subsec. (a)(18). Pub. L. 86-750, § 1(b), eliminated the Philippine Islands, which change was previously executed in the codification of this section pursuant to Proc. No. 2695, which granted independence to the Philippine Islands.

Pub. L. 86-624 eliminated "Hawaii," preceding "Puerto Rico".

1959—Subsec. (a). Pub. L. 86-70 eliminated "Alaska," preceding "Hawaii" in cl. (18).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Applicability to United States, or their governmental agencies of—
- Investment Company Act of 1940, see section 80a-2 of this title.
- Public Utility Holding Company Act of 1935, see section 79b of this title.
- Securities Exchange Act of 1934, see section 78c of this title.

Definition of terms—
- Assignment, bank, broker, company, convicted, dealer, director, exchange, investment adviser, national securities exchange, person, security, and underwriter under Investment Company Act of 1940, see section 80a-2 of this title.
- Bank, broker, dealer, director, exchange, person, security, and underwriter under Securities Exchange Act of 1934, see section 78c of this title.
- Company, director, person, and security under Public Utility Holding Company Act of 1935, see section 79b of this title.
- Dealer, person, security, and underwriter under Securities Act of 1933, see section 77b of this title.
- Director and underwriter under Trust Indenture Act of 1939, see section 77ccc of this title.
- Investment advisory contract, see section 80b-5 of this title.

§ 80b-3. Registration of investment advisers

(a) Necessity of registration

Except as provided in subsection (b) of this section, it shall be unlawful for any investment adviser, unless registered under this section, to make use of the mails or any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser.

(b) Investment advisers who need not be registered

The provisions of subsection (a) of this section shall not apply to—

(1) any investment adviser all of whose clients are residents of the State within which such investment adviser maintains his or its principal office and place of business, and who does not furnish advice or issue analyses or reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange;

(2) any investment adviser whose only clients are insurance companies; or

(3) any investment adviser who during the course of the preceding twelve months has had fewer than fifteen clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under subchapter I of this chapter.

(c) Procedure for registration; filing of application; effective date of registration; amendment of registration

(1) An investment adviser, or any person who presently contemplates becoming an investment adviser, may be registered by filing with the Commission an application for registration in such form and containing such of the following information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors:

(A) the name and form of organization under which the investment adviser engages or intends to engage in business; the name of the State or other sovereign power under which such investment adviser is organized; the location of his or its principal business office and branch offices, if any; the names and addresses of his or its partners, officers, directors, and persons performing similar functions or, if such an investment adviser be an individual, of such individual; and the number of his or its employees;

(B) the education, the business affiliations for the past ten years, and the present business affiliations of such investment adviser and of his or its partners, officers, directors, and persons performing similar functions and of any controlling person thereof;

(C) the nature of the business of such investment adviser, including the manner of giving advice and rendering analyses or reports;

(D) a balance sheet certified by an independent public accountant and other financial statements (which shall, as the Commission specifies, be certified);

(E) the nature and scope of the authority of such investment adviser with respect to clients' funds and accounts;

(F) the basis or bases upon which such investment adviser is compensated;

(G) whether such investment adviser, or any person associated with such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (e) of this section; and

(H) a statement as to whether the principal business of such investment adviser consists or is to consist of acting as investment adviser and a statement as to whether a substantial part of the business of such investment adviser, consists or is to consist of rendering investment supervisory services.

(2) Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents) the Commission shall—

(A) by order grant such registration; or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (e) of this section.

(d) Other acts prohibited by subchapter

Any provision of this subchapter (other than subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce are used in connection therewith shall also prohibit any such act, practice, or course of business by any investment adviser registered pursuant to this section or any person acting on behalf of such an investment adviser, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(e) Censure, denial, or suspension of registration; notice and hearing

The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any investment adviser if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such investment adviser, or any person associated with such investment adviser, whether prior to or subsequent to becoming so associated—

(1) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under this subchapter, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

(2) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor which the Commission finds—

(A) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense;

(B) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, or fiduciary;

(C) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; or

(D) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18.

(3) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, or municipal securities dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

(4) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], subchapter I of this chapter, this subchapter, or the rules or regulations under any such statutes or any rule of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

(5) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], subchapter I of this chapter, this subchapter, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this paragraph (5) no person shall be deemed to have failed reasonably to supervise any person, if—

(A) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

(B) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

(6) is subject to an order of the Commission entered pursuant to subsection (f) of this section barring or suspending the right of such person to be associated with an investment adviser which order is in effect with respect to such person.

(f) Bar or suspension from association with investment adviser; notice and hearing

The Commission, by order, shall censure or place limitations on the activities of any person associated or seeking to become associated with an investment adviser, or suspend for a period not exceeding twelve months or bar any such person from being associated with an investment adviser, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in paragraph (1), (4), or (5) of subsection (e) of this section or has been convicted of any offense specified in paragraph (2) of said subsection (e) within ten years of the commencement of the proceedings under this subsection, or is enjoined from any action, conduct, or practice specified in paragraph (3) of said subsection (e). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with an investment adviser is in effect willfully to become, or to be, associated with an investment adviser without the consent of the Commission, and it shall be unlawful for any investment adviser to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such investment adviser knew, or in the exercise of reasonable care, should have known, of such order.

(g) Registration of successor to business of investment adviser

Any successor to the business of an investment adviser registered under this section shall be deemed likewise registered hereunder, if within thirty days from its succession to such business it shall file an application for registration under this section, unless and until the Commission, pursuant to subsection (d) of this section, shall deny registration to or revoke or suspend the registration of such successor.

(h) Withdrawal of registration

Any person registered under this section may, upon such terms and conditions as the Commission finds necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any person registered under this section, or who has pending an application for registration filed under this section, is no longer in existence or is not engaged in business as an investment adviser, the Commission shall by order cancel the registration of such person.

(Aug. 22, 1940, ch. 686, title II, § 203, 54 Stat. 850; Sept. 13, 1960, Pub. L. 86-750, §§ 2-5, 74 Stat. 885, 886; Dec. 14, 1970, Pub. L. 91-547, § 24, 84 Stat. 1430; June 4, 1975, Pub. L. 94-29, § 29(1)-(4), 89 Stat. 166-169.)

REFERENCES IN TEXT

Subchapter I of this chapter, referred to in subsec. (b)(3), in the original read "title I of this Act", meaning act Aug. 22, 1940, ch. 686, title I, 54 Stat. 789, known as the Investment Company Act of 1940. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables volume.

The Securities Act of 1933, referred to in subsec. (e)(4) and (5), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables volume.

The Securities Exchange Act of 1934, referred to in subsec. (e)(4) and (5), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

Subchapter I of this chapter, referred to in subsec. (e)(4) and (5), in the original read "the Investment Company Act of 1940", which is act Aug. 22, 1940, ch. 686, title I, 54 Stat. 789. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables volume.

AMENDMENTS

1975—Subsec. (c). Pub. L. 94-29, § 29(1), added provision authorizing the Commission to require a balance sheet certified by an independent public accountant and other financial statements which, as the Commission specifies, may be certified, and substituted provisions directing the Commission either to grant the registration within forty-five days or institute proceedings to determine whether registration should be denied, directing the Commission to grant registration if it finds that the requirements of this section are satisfied, and requiring the Commission to deny registration if it does not make such a finding or finds that if the applicant were registered its registration would be subject to suspension or revocation for provisions directing that registration be effective thirty days after receipt of the application by the Commission except as otherwise provided and making allowances for amendment of the application.

Subsec. (e). Pub. L. 94-29, § 29(2), added the placing of limitations on the activities of investment advisers to the enumeration of sanctions available to the Commission as set out in the provisions preceding par. (1), added references in par. (2)(A) to the taking of a false oath, the making of a false report, bribery, perjury, burglary, and conspiracy to commit such offenses, expanded par. (2)(B) to include municipal securities dealers, banks, insurance companies, and fiduciaries, added references in par. (2)(C) to larceny, theft, robbery, extortion, forgery, counterfeiting, and fraudulent concealment, added references in par. (2)(D) to section 152 and chapters 25 and 47 of title 18, and inserted reference to the rules of the Municipal Securities Rulemaking Board in pars. (4) and (5).

Subsec. (f). Pub. L. 94-29, § 29(3), added the placing of limitations on the activities of persons associated or seeking to become associated with an investment adviser to the enumeration of sanctions available to the Commission.

Subsec. (g). Pub. L. 94-29, § 29(4), redesignated former subsec. (h) as (g). Former subsec. (g), covering the postponment of the effective day of registration by the commencement of a proceeding to deny registration, was stricken.

Subsec. (h). Pub. L. 94-29, § 29(4), redesignated former subsec. (i) as (h). Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 94-29, § 29(4), redesignated former subsec. (i) as (h).

1970—Subsec. (b). Pub. L. 91-547, § 24(a), deleted "investment companies and" preceding "insurance companies" in par. (2) and delete "does not hold" following "clients and who" and inserted "neither hold" and "nor acts as an investment adviser to any investment company registered under subchapter I of this chapter" in par. (3).

Subsec. (c)(1)(F). Pub. L. 91-547, § 24(b), substituted "any person associated with such investment adviser" for "any partner, officer, director thereof, or any person performing similar functions, or any person directly or indirectly controlling or controlled by such investment adviser" and reference to subsec. "(e)" for "(d)".

Subsec. (d). Pub. L. 91-547, § 24(c), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 91-547, § 24(c), (d), redesignated former subsec. (d) as (e), and in amending its provisions, inserted reference to "censure" in two instances and substituted "such investment adviser or any person associated with such investment adviser" for "(1) such investment adviser, whether prior or subsequent to becoming such, or (2) any partner, officer, or director thereof, or any person performing similar functions, or (3) any person directly or indirectly controlling or controlled by such investment adviser, whether prior or subsequent to becoming such," in introductory text preceding par. (1), formerly cl. (A), redesignated as pars. (1) to (5) former cls. (A) to (E), redesignated as items (A) to (D) of par. (2) former items (i) to (iv), deleting ", as heretofore or hereafter amended" following "Title 18", substituted in par. (3) "an affiliated person" for "as an affiliated person", in par. (4) included reference to subchapter I of this chapter and deleted "as any of such statutes heretofore have been or hereafter may be amended" following "this subchapter", in par. (5) included reference to subchapter I of this chapter, deleted "as any of such statutes heretofore have been or hereafter may be amended" following "this subchapter", added provision respecting disciplining an investment adviser for failure reasonably to supervise, with a view to preventing violations of statutes, rules, and regulations, another person who commits such a violation if such other person is subject to his supervision, including subpars. (A) and (B) respecting failure to supervise a person, and added par. (6). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 91-547, § 24(e), added subsec. (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 91-547, § 24(c), redesignated former subsec. (e) as (g). Former subsec. (g) redesignated (i).

Subsec. (h). Pub. L. 91-547, § 24(e), redesignated former subsec. (f) as (h).

Subsec. (i). Pub. L. 91-547, § 24(e), redesignated former subsec. (g) as (i).

1960—Subsec. (c)(1)(F). Pub. L. 86-750, § 2, substituted "or any person performing similar functions, or any person directly or indirectly controlling or controlled by such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (d)" for "person performing similar function or controlling person thereof (i) within ten years of the filing of such application has been convicted of any felony or misdemeanor of the character described in paragraph (1) of subsection (d) of this section, or (ii) is permanently or temporarily enjoined by an order, judgment or decree of the character described in paragraph (2) of said subsection (d) and in each case the facts relating to such conviction or injunction".

Subsec. (c)(2). Pub. L. 86-750, § 3(a), substituted "a statement as to whether the principal business of such investment adviser consists or is to consist of acting as investment adviser and a statement as to whether a substantial part of the business of such investment adviser consists or is to consist of rendering investment supervisory services" for "a statement as to whether such investment adviser is engaged or is to engage primarily in the business of rendering investment supervisory services".

Subsec. (d). Pub. L. 86-750, § 3(b), among other changes, limited the period of suspension to twelve months, included people controlled by the adviser, provided that the ten year period within which convictions are counted be measured from the filing of the application or after specified felonies or misdemeanors, increased the number of offenses by including willful, false or misleading statements as to any material fact, or omissions thereof, in any application for registration or report filed with the Commission, embezzlement, fraudulent conversion, and misappropriation of funds or securities, violations of sections 1341, 1342 or 1343 of title 18, willful violations of, or aiding, abetting, counseling, commanding, inducing or procuring the violation of the Securities Act of 1933, or of the Securities Exchange Act of 1934, or of this title, and any amendment or rule or regulation thereunder.

Subsec. (e). Pub. L. 86-750, § 4, substituted provisions postponing the effective date of registration for ninety days at commencement of a proceeding to deny registration, or until final determination whether such registration should be denied, whichever was first, and authorizing the Commission after notice and opportunity for hearing, to postpone said effective date beyond the ninety-day period or final determination, provided that upon request of any interested party, made more than ninety days after such postponement, the Commission shall consider the postponement's continutation, for provisions prohibiting postponement of the effective date of registration upon a proceeding to deny registration, unless the Commission found it in the public interest to do so, and which limited said postponement to three months.

Subsec. (g). Pub. L. 86-750, § 5, substituted "existence" for "business".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-547, see section 30, introductory text and par. (1), of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Approval, etc., by the United States, representation prohibited, see section 80b-8 of this title.

Mail, exemption from prohibition of use to enter into investment advisory contracts, see section 80b-5 of this title.

Material misstatements in registration application, see section 80b-7 of this title.

Reports by investment advisers, exempt persons, see section 80b-4 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a-35, 80b-2, 80b-4, 80b-5, 80b-7, 80b-8 of this title.

§ 80b-4. Reports by investment advisers

Every investment adviser who makes use of the mails or of any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser (other than one specifically exempted from registration pursuant to section 80b-3(b) of this title), shall make and keep for prescribed periods such records (as defined in section 78c(a)(37) of this title), furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. All records (as so defined) of such investment advisers are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(Aug. 22, 1940, ch. 686, title II, § 204, 54 Stat. 852; Sept. 13, 1960, Pub. L. 86-750, § 6, 74 Stat. 886; June 4, 1975, Pub. L. 94-29, § 29(5), 89 Stat. 169.)

AMENDMENTS

1975—Pub. L. 94-29 substituted "make and keep for prescribed periods such records (as defined in section 78c(a)(37) of this title), furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. All records (as so defined) of such investment advisers are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors" for "make, keep, and preserve for such periods, such accounts, correspondence, memorandums, papers, books, and other records, and make such reports, as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest or for the protection of investors. Such accounts, correspondence, memorandums, papers, books, and other records shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors".

1960—Pub. L. 86-750 substituted provisions requiring investment advisers who make business use of the mails or any instrument of interstate commerce, unless exempted from registration by section 80b-3(b) of this title, to keep and preserve accounts, correspondence, memorandums, papers, books, and records, and make such reports as the Commission requires by its rules and regulations, and that these accounts, correspondence, memorandums, papers, books and records shall be subject to examination by representatives of the Commission, for provisions requiring investment advisers registered under section 80b-3 of this title to file annual and special reports in such form as the Commission prescribed by its rules and regulations to keep current the information contained in the registration application.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Material misstatements in reports, see section 80b-7 of this title.

§ 80b-5. Investment advisory contracts

No investment adviser, unless exempt from registration pursuant to section 80b-3(b) of this title, shall make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to enter into, extend, or renew any investment advisory contract, or in any way to perform any investment advisory contract entered into, extended, or renewed on or after November 1, 1940, if such contract—

(1) provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) fails to provide, in substance, that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract; or

(3) fails to provide, in substance, that the investment adviser, if a partnership, will notify the other party to the contract of any change in the membership of such partnership within a reasonable time after such change.

Paragraph (1) of this section shall not (A) be construed to prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date, or (B) apply to an investment advisory contract with—

(i) an investment company registered under subchapter I of this chapter, or

(ii) any other person (except a trust, collective trust fund or separate account referred to in section 80a-3(c)(11) of this title, provided that the contract relates to the investment of assets in excess of $1 million,

which contract provides for compensation based on the asset value of the company or fund under management averaged over a specified period and increasing and decreasing proportionately with the investment performance of the company or fund over a specified period in relation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the Commission by rule, regulation, or order may specify. For purposes of clause (B) of the preceding sentence, the point from which increases and decreases in compensation are measured shall be the fee which is paid or earned when the investment performance of such company or fund is equivalent to that of the index or other measure of performance, and an index of securities prices shall be deemed appropriate unless the Commission by order shall determine otherwise. As used in paragraphs (2) and (3) of this section, "investment advisory contract" means any contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account of another person other than an investment company registered under subchapter I of this chapter.

(Aug. 22, 1940, ch. 686, title II, § 205, 54 Stat. 852; Sept. 13, 1960, Pub. L. 86-750, § 7, 74 Stat. 887; Dec. 14, 1970, Pub. L. 91-547, § 25, 84 Stat. 1432.)

AMENDMENTS

1970—Pub. L. 91-547 substituted reference to section "80b-3(b)" for "80b-3" of this title in first sentence, redesignated as second sentence former third sentence, designating existing provisions as cl. (A) and adding cl. (B) and items (i) and (ii) and provision respecting compensation based on asset value of company or fund under management averaged over a specified period in relation to investment record of an index of securities or such other measure of investment performance specified by Commission rules, regulations, or orders, added third sentence provision respecting point from which compensation is to be measured, substituted in fourth, formerly third, sentence "paragraphs (2) and (3) of this section" for "this section" and in definition of "investment advisory contract" the words "account of another person other than an investment company registered under subchapter I of this chapter" for "account for a person other than an investment company".

1960—Pub. L. 86-750 substituted "unless exempt from registration pursuant to" for "registered under".

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-547, see section 30(1) of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Investment advisory and underwriting contracts, see section 80a-15 of this title.

§ 80b-6. Prohibited transactions by investment advisers

It shall be unlawful for any investment adviser by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud any client or prospective client;

(2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;

(3) acting as principal for his own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The prohibitions of this paragraph shall not apply to any transaction with a customer of a broker or dealer if such broker or dealer is not acting as an investment adviser in relation to such transaction.

(4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The Commission shall, for the purposes of this paragraph (4) by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.

(Aug. 22, 1940, ch. 686, title II, § 206, 54 Stat. 852; Sept. 13, 1960, Pub. L. 86-750, §§ 8, 9, 74 Stat. 887.)

AMENDMENTS

1960—Pub. L. 86-750, § 8, deleted "registered under section 80b-3 of this title" from the introductory paragraph.

Par. (4). Pub. L. 86-750, § 9, added par. (4).

§ 80b-6a. Exemptions

The Commission, by rules and regulations, upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons, or transactions, from any provision or provisions of this subchapter or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter.

(Aug. 22, 1940, ch. 686, title II, § 206A, as added Dec. 14, 1970, Pub. L. 91-547, § 26, 84 Stat. 1433.)

EFFECTIVE DATE

Section effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-2 of this title.

§ 80b-7. Material misstatements

It shall be unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission under section 80b-3 or 80b-4 of this title, or willfully to omit to state in any such application or report any material fact which is required to be stated therein.

(Aug. 22, 1940, ch. 686, title II, § 207, 54 Stat. 853.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80b-8. General prohibitions

(a) Representations of sponsorship by United States or agency thereof

It shall be unlawful for any person registered under section 80b-3 of this title to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved, or that his abilities or qualifications have in any respect been passed upon by the United States or any agency or any officer thereof.

(b) Statement of registration under Securities Exchange Act of 1934 provisions

No provision of subsection (a) of this section shall be construed to prohibit a statement that a person is registered under this subchapter or under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], if such statement is true in fact and if the effect of such registration is not misrepresented.

(c) Use of name "investment counsel" as descriptive of business

It shall be unlawful for any person registered under section 80b-3 of this title to represent that he is an investment counsel or to use the name "investment counsel" as descriptive of his business unless (1) his or its principal business consists of acting as investment adviser, and (2) a substantial part of his or its business consists of rendering investment supervisory services.

(d) Use of indirect means to do prohibited act

It shall be unlawful for any person indirectly, or through or by any other person, to do any act or thing which it would be unlawful for such person to do directly under the provisions of this subchapter or any rule or regulation thereunder.

(Aug. 22, 1940, ch. 686, title II, § 208, 54 Stat. 853; Sept. 13, 1960, Pub. L. 86-750, §§ 10, 11, 74 Stat. 887.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (b), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified generally to 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables volume.

AMENDMENTS

1960—Pub. L. 86-750, § 10, substituted "General prohibitions" for "Unlawful representations" in the catchline.

Subsec. (c). Pub. L. 86-750, § 11(a), authorized representation as an investment counsel if person's principal business consisted of acting as investment adviser, and a substantial part of the business was rendering investment supervisory services, and deleted the requirements that the person be primarily engaged in rendering investment supervisory services, or that his registration application state that the person is, or is about to become engaged primarily in rendering investment advisory services.

Subsec. (d). Pub. L. 86-750, § 11(b), added subsec. (d).

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80b-9. Enforcement of subchapter

(a) Investigation

Whenever it shall appear to the Commission, either upon complaint or otherwise, that the provisions of this subchapter or of any rule or regulation prescribed under the authority thereof, have been or are about to be violated by any person, it may in its discretion require, and in any event shall permit, such person to file with it a statement in writing, under oath or otherwise, as to all the facts and circumstances relevant to such violation, and may otherwise investigate all such facts and circumstances.

(b) Administration of oaths and affirmations, subpena of witnesses, etc.

For the purposes of any investigation or any proceeding under this subchapter, any member of the Commission or any officer thereof designated by it is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which are relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

(c) Jurisdiction of courts of United States

In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who without just cause shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(d) Repealed. Pub. L. 91-452, title II, § 216, Oct. 15, 1970, 84 Stat. 929

(e) Action for injunction

Whenever it shall appear to the Commission that any person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of this subchapter, or of any rule, regulation, or order hereunder, or that any person has aided, abetted, counseled, commanded, induced, or procured, is aiding, abetting, counseling, commanding, inducing, or procuring, or is about to aid, abet, counsel, command, induce, or procure such a violation, it may in its discretion bring an action in the proper district court of the United States, or the proper United States court of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this subchapter or any rule, regulation, or order hereunder. Upon a showing that such person has engaged, is engaged, or is about to engage in any such act or practice, or in aiding, abetting, counseling, commanding, inducing, or procuring any such act or practice, a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning any violation of the provisions of this subchapter, or of any rule, regulation, or order thereunder, to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this subchapter.

(Aug. 22, 1940, ch. 686, title II, § 209, 54 Stat. 853; Sept. 13, 1960, Pub. L. 86-750, § 12, 74 Stat. 887; Oct. 15, 1970, Pub. L. 91-452, title II, § 216, 84 Stat. 929.)

AMENDMENTS

1970—Subsec. (d). Pub. L. 91-452 struck out subsec. (d) which related to the immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

1960—Subsec. (e). Pub. L. 86-750 inserted ", is engaged," following "has engaged" wherever appearing, and added provisions relating to aiders and abettors.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

SAVINGS PROVISION

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

CROSS REFERENCES

Enforcement under—
  Investment Company Act of 1940, see section 80a-41 of this title.
  Public Utility Holding Company Act of 1935, see section 79r of this title.
  Securities Act of 1933, see sections 77s, 77t and 77v of this title.
  Securities Exchange Act of 1934, see section 78u of this title.
  Trust Indenture Act of 1939, see sections 77uuu and 77vvv of this title.

Contempt proceedings, see sections 401, 402, 3285, 3691, and 3771 of Title 18, Crimes and Criminal Procedure.

Disclosure of information by Commission, see section 80b-10 of this title.

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

FEDERAL RULES OF APPELLATE PROCEDURE

Review and enforcement of orders of administrative agencies, boards, commissions, and officers, see rule 15 et seq., Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Process, see rule 4, Title 28, Appendix, Judiciary and Judicial Procedure.

Subpoena, see rule 45.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal contempt, see rule 42, Title 18, Appendix, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80b-10 of this title.

§ 80b-10. Disclosure of information by Commission

(a) Information available to public

The information contained in any registration application or report or amendment thereto filed with the Commission pursuant to any provision of this subchapter shall be made available to the public, unless and except insofar as the Commission, by rules and regulations upon its own motion, or by order upon application, finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. Photostatic or other copies of information contained in documents filed with the Commission under this subchapter and made available to the public shall be furnished to any person at such reasonable charge and under such reasonable limitations as the Commission shall prescribe.

(b) Disclosure of fact of examination or investigation; exceptions

Subject to the provisions of subsections (c) and (e) of section 80b-9 of this title, the Commission, or any member, officer, or employee thereof, shall not make public the fact that any examination or investigation under this subchapter is being conducted, or the results of or any facts ascertained during any such examination or investigation; and no member, officer, or employee of the Commission shall disclose to any person other than a member, officer, or employee of the Commission any information obtained as a result of any such examination or investigation except with the approval of the Commission. The provisions of this subsection shall not apply—

(1) in the case of any hearing which is public under the provisions of section 80b-12 of this title; or

(2) in the case of a resolution or request from either House of Congress.

(c) Disclosure by investment adviser of identity of clients

No provision of this subchapter shall be construed to require, or to authorize the Commission to require any investment adviser engaged in rendering investment supervisory services to disclose the identity, investments, or affairs of any client of such investment adviser, except insofar as such disclosure may be necessary or appropriate in a particular proceeding or investigation having as its object the enforcement of a provision or provisions of this subchapter.

(Aug. 22, 1940, ch. 686, title II, § 210, 54 Stat. 854; Sept. 13, 1960, Pub. L. 86-750, § 13, 74 Stat. 887.)

AMENDMENTS

1960—Subsec. (b). Pub. L. 86-750 inserted ", or any member, officer, or employee thereof," following "the Commission", and added the proscription against disclosing information to any person not a member, officer, or employee of the Commission.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80b-11. Rules, regulations, and orders of Commission

(a) Power of Commission

The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission elsewhere in this subchapter. For the purposes of its rules or regulations the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters.

(b) Effective date of regulations

Subject to the provisions of chapter 15 of title 44 and regulations prescribed under the authority thereof, the rules and regulations of the Commission under this subchapter, and amendments thereof, shall be effective upon publication in the manner which the Commission shall prescribe, or upon such later date as may be provided in such rules and regulations.

(c) Orders of Commission after notice and hearing; type of notice

Orders of the Commission under this subchapter shall be issued only after appropriate notice and opportunity for hearing. Notice to the parties to a proceeding before the Commission shall be given by personal service upon each party or by registered mail or certified mail or confirmed telegraphic notice to the party's last known business address. Notice to interested persons, if any, other than parties may be given in the same manner or by publication in the Federal Register.

(d) Good faith compliance with rules and regulations

No provision of this subchapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(Aug. 22, 1940, ch. 686, title II, § 211, 54 Stat. 855; June 11, 1960, Pub. L. 86-507, § 1(16), 74 Stat. 201; Sept. 13, 1960, Pub. L. 86-750, § 14, 74 Stat. 888.)

CODIFICATION

In subsec. (b), "chapter 15 of title 44" was substituted for "the Federal Register Act" on authority of section 2(b) of Pub. L. 90-260, Oct. 22, 1968, 82 Stat. 1305, section 1 of which enacted Title 44, Public Printing and Documents.

AMENDMENTS

1960—Subsec. (a). Pub. L. 86-750 inserted "functions and".

Subsec. (c). Pub. L. 86-507 inserted "or certified mail" following "registered mail".

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Rules and regulations under—
- Investment Company Act of 1940, see section 80a-37 of this title.
- Public Utility Holding Company Act of 1935, see section 79t of this title.
- Securities Act of 1933, see section 77s of this title.
- Securities Exchange Act of 1934, see sections 78c and 78w of this title.
- Trust Indenture Act of 1939, see section 77sss of this title.

§ 80b-12. Hearings

Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

(Aug. 22, 1940, ch. 686, title II, § 212, 54 Stat. 855.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Disclosure of information by Commission, see section 80b-10 of this title.

Hearings by Commission under—
- Investment Company Act of 1940, see section 80a-40 of this title.
- Public Utility Holding Company Act of 1935, see section 79s of this title.
- Securities Act of 1933, see section 77u of this title.
- Securities Exchange Act of 1934, see section 78v of this title.
- Trust Indenture Act of 1939, see section 77ttt of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 80b-10 of this title.

§ 80b-13. Court review of orders

(a) Any person or party aggrieved by an order issued by the Commission under this subchapter may obtain a review of such order in the United States court of appeals within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) The commencement of proceedings under subsection (a) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(Aug. 22, 1940, ch. 686, title II, § 213, 54 Stat. 855; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Aug. 28, 1958, Pub. L. 85-791, § 26, 72 Stat. 949.)

CODIFICATION

In subsec. (a), "section 1254 of title 28" was substituted for "sections 239 and 240 of the Judicial Code [28 U.S.C. 346, 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-791, in second sentence, substituted "transmitted by the clerk of the court to any member of the Commission, or" for "served upon any member of the Commission, or upon", substituted "file in the court" for "certify and file in the court a transcript of", and inserted "as provided in section 2112 of title 28", and which, in third sentence, substituted "petition" for "transcript", and "jurisdiction, which upon the filing of the record shall be exclusive" for "exclusive jurisdiction".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Review of orders under—
- Investment Company Act of 1940, see section 80a-42 of this title.
- Public Utility Holding Company Act of 1935, see section 79x of this title.
- Securities Act of 1933, see section 77i of this title.
- Securities Exchange Act of 1934, see section 78y of this title.
- Trust Indenture Act of 1939, see section 77vvv of this title.

§ 80b-14. Jurisdiction of offenses and suits

The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this subchapter or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity to enjoin any violation of this subchapter or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enjoin any violation of this subchapter or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291 and 1292 of title 28 and section 7, as amended, of the Act entitled "An Act to establish a court of appeals for the District of Columbia", approved February 9, 1893. No costs shall be assessed for or against the Commission in any proceeding under this subchapter brought by or against the Commission in any court.

(Aug. 22, 1940, ch. 686, title II, § 214, 54 Stat. 856.)

REFERENCES IN TEXT

Act February 9, 1893, ch. 74, § 7, 27 Stat. 435, referred to in text, was repealed by act May 24, 1949, ch. 139, § 142, 63 Stat. 110. See sections 1291 and 1292 of Title 28.

CODIFICATION

"Sections 1254, 1291 and 1292 of title 28" were substituted for "sections 128 and 240 of the Judicial Code [28 U.S.C. 225 and 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Jurisdiction of offenses and suits under—
- Investment Company Act of 1940, see section 80a-43 of this title.
- Public Utility Holding Company Act of 1935, see section 79y of this title.
- Securities Act of 1933, see section 77v of this title.
- Securities Exchange Act of 1934, see section 78aa of this title.
- Trust Indenture Act of 1939, see section 77vvv of this title.

Venue, see section 1391 et seq. of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Costs, see rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

Injunctions, see rule 65.

One form of action, see rule 2.

Process, see rule 4.

FEDERAL RULES OF CRIMINAL PROCEDURE

Continuation of section under rule 18, see note by Advisory Committee under rule 18, Title 18, Appendix, Crimes and Criminal Procedure.

Venue, see rules 18 to 22.

§ 80b-15. Validity of contracts

(a) Any condition, stipulation, or provision binding any person to waive compliance with any provision of this subchapter or with any rule, regulation, or order thereunder shall be void.

(b) Every contract made in violation of any provision of this subchapter and every contract heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of any provision of this subchapter, or any rule, regulation, or order thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, regulation, or order, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision.

(Aug. 22, 1940, ch. 686, title II, § 215, 54 Stat. 856.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80b-16. Annual reports of Commission

The Commission shall submit annually a report to the Congress covering the work of the Commission for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this subchapter as it may find advisable.

(Aug. 22, 1940, ch. 686, title II, § 216, 54 Stat. 857.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80b-17. Penalties

Any person who willfully violates any provision of this subchapter, or any rule, regulation, or order promulgated by the Commission under authority thereof, shall, upon conviction, be fined not more than $10,000, imprisoned for not more than five years, or both.

(Aug. 22, 1940, ch. 686, title II, § 217, 54 Stat. 857; Sept. 13, 1960, Pub. L. 86-750, § 15, 74 Stat. 888; June 4, 1975, Pub. L. 94-29, § 27(f), 89 Stat. 163.)

AMENDMENTS

1975—Pub. L. 94-29 substituted "imprisoned for not more than five years" for "imprisoned for not more than two years".

1960—Pub. L. 86-750 inserted ", or any rule, regulation or order promulgated by the Commission under authority thereof,".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

§ 80b-18. Officers and employees of Commission

For the purposes of this subchapter, the Commission may select, employ, and fix the compensation of such attorneys, examiners, and other experts as shall be necessary for the transaction of the business of the Commission in respect of this subchapter; and the Commission may, subject to the civil-service laws, appoint such other officers and employees as are necessary in the execution of the functions of the Commission and fix their salaries in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(Aug. 22, 1940, ch. 686, title II, § 218, 54 Stat. 857; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972.)

REFERENCES IN TEXT

The civil-service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

CODIFICATION

Provisions that authorized the Commission to select, employ, and fix the compensation of such attorneys, examiners, and other experts as shall be necessary for the transaction of the business of the Commission in respect of this subchapter "without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States" were omitted as obsolete and superseded.

Such selection and employment are now subject to the civil service laws unless specifically excepted by those laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5, Government Organization and Employees.

As to the compensation of such personnel, sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed Pub. L. 89-554, Sept. 6, 1966, § 8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5. Section 5102 of Title 5 now contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Civil Service Commission to determine the applicability to specific positions and employees.

"Chapter 51 and subchapter III of chapter 53 of title 5" were substituted for "the Classification Act of 1949" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1949—Act Oct. 28, 1949, struck out "Classification Act of 1923" and inserted in lieu thereof "Classification Act of 1949".

REPEALS

Act Oct. 28, 1949, ch. 782, § 1106(a), 63 Stat. 972, set out in the credit of this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Securities and Exchange Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 80b-18a. State control of investment advisers

Nothing in this subchapter shall affect the jurisdiction of the securities commissioner (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this subchapter or the rules and regulations thereunder.

(Aug. 22, 1940, ch. 686, title II, § 222, as added Sept. 13, 1960, Pub. L. 86-750, § 16, 74 Stat. 888.)

§ 80b-19. Separability of provisions

If any provision of this subchapter or the application of such provision to any person or circumstances shall be held invalid, the remainder of the subchapter and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

(Aug. 22, 1940, ch. 686, title II, § 219, 54 Stat. 857.)

§ 80b-20. Short title

This subchapter may be cited as the "Investment Advisers Act of 1940".

(Aug. 22, 1940, ch. 686, title II, § 220, 54 Stat. 857.)

CROSS REFERENCES

Corporation of Foreign Bondholders Act, 1933, see section 77mm of this title.

Investment Company Act of 1940, see section 80a-52 of this title.

Public Utility Holding Company Act of 1935, see section 79 of this title.

Securities Act of 1933, see section 77a of this title.

Securities Exchange Act of 1934, see section 78a of this title.

Trust Indenture Act of 1939, see section 77aaa of this title.

§ 80b-21. Effective date

This subchapter shall become effective on November 1, 1940.

(Aug. 22, 1940, ch. 868, title II, § 221, 54 Stat. 857.)

CHAPTER 3—TRADE-MARKS

§§ 81 to 134. Repealed. July 5, 1946, ch. 540, § 46(a), 60 Stat. 444

DISTRIBUTION TABLE

Former provisions of this title	*Present provisions of this title*
Sec.	Sec.
81	1051, 1054, 1126(b).
82	1051, 1061.
83	1126.
84	1125(c), (d).
85	1052.
86	1062, 1063.
87	1063, 1066 to 1068.
88	1070.
89	1071.
90	1060.
91	1057(a), (c).
92	1058, 1059, 1126(f).
93	1064, 1068, 1070.
94	1113.
95	1113.
96	1057(b), 1114, 1115, 1117.
97	1121.
98	1122.
99	1116, 1117.
100	1116, 1118.
101	1115.
102	1071, 1119.
103	1051 note.
104	1120.
105	1123.
106	1124.
107	1111.
108	1127.
109	1051 note.
121	1051 note, 1091, 1126.
122	1092.
123	1125.
124	1114, 1117.
125	1111.
126	1094, 1126 (f).
127	1057(e).
128	1113.
131	1112.
132	1051 note.
133	1057(f).
134	not now covered.

Sections were repealed effective one year from July 5, 1946, insofar as inconsistent with present trademark provisions contained in chapter 22, § 1051 et seq. of this title. For effect of repeal on existing registrations and pending proceedings see notes under section 1051 of this title.

Sections 98 and 127 were rerepealed by act June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948.

DERIVATION

Sections were derived from the following acts:

Feb. 20, 1905, ch. 592, §§ 1 to 23, 25-30, 33 Stat. 724 to 731.
May 4, 1906, ch. 2081, §§ 1 to 3, 34 Stat. 168, 169.
Mar. 2, 1907, ch. 2573, §§ 1, 2, 34 Stat. 1251, 1252.
Feb. 18, 1909, ch. 144, 35 Stat. 627, 628.
Feb. 18, 1911, ch. 113, 36 Stat. 918.
Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.
Aug. 24, 1912, ch. 370, § 5, 37 Stat. 498.
Jan. 8, 1913, ch. 7, 37 Stat. 649.
Mar. 19, 1920, ch. 104, §§ 1 to 9, 41 Stat. 533 to 535.
June 7, 1924, ch. 341, 43 Stat. 647.
Mar. 4, 1925, ch. 535, §§ 1, 3, 43 Stat. 1268, 1269.
Mar. 2, 1929, ch. 488, § 2 (b), 45 Stat. 1476.
Apr. 11, 1930, ch. 132, § 4, 46 Stat. 155.
June 7, 1934, ch. 426, 48 Stat. 926.
June 20, 1936, ch. 617, 49 Stat. 1539.
June 25, 1936, ch. 804, 49 Stat. 1921.
June 10, 1938, ch. 332, §§ 1 to 3, 5, 52 Stat. 638, 639.

CHAPTER 4—CHINA TRADE

Sec.
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157. Regulations and fees; disposition of fees and penalties.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 26 sections 246, 901, 941, 942, 943, 992, 1504, 6072, 6091.

CHAPTER REFERRED TO IN D.C. CODE

This chapter is referred to in section 47-1504 of the District of Columbia Code.

§ 141. Short title

This chapter may be cited as the "China Trade Act, 1922."

(Sept. 19, 1922, ch. 346, § 1, 42 Stat. 849.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning act Sept. 19, 1922, ch. 346, 42 Stat. 849. The Act (except sections 21 to 27) is classified to this chapter. Sections 21 to 27 of the Act amended title II of the Revenue Act of 1921, which was repealed by section 1100 of the Revenue Act of 1924 (43 Stat. 352).

CROSS REFERENCES

Assistance under foreign assistance provisions to Peoples Republic of China, Tibet, Outer Mongolia-Mongolian Peoples Republic prohibited except upon express findings of the President, see section 2370 of Title 22, Foreign Relations and Intercourse.

§ 142. Definitions

When used in this chapter, unless the context otherwise indicates—

(a) The term "person" includes individual, partnership, corporation, and association;

(b) The term "China" means (1) China including Manchuria, Tibet, Mongolia, and any territory leased by China to any foreign government, (2) the Crown Colony of Hong Kong, and (3) the Province of Macao;

(c) The terms "China Trade Act corporation" and "corporation" mean a corporation chartered under the provisions of this chapter;

(d) The term "Federal district court" means any Federal district court, and the United States District Court for the District of Columbia;

(e) The term "Secretary" means the Secretary of Commerce; and

(f) The term "registrar" means the China Trade Act registrar appointed under section 143 of this title.

(Sept. 19, 1922, ch. 346, § 2, 42 Stat. 849; June 25, 1936, ch. 804, 49 Stat. 1921; Treaty Jan. 11, 1943, 57 Stat. 767; June 25, 1948, ch. 646, § 32 (a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CODIFICATION

Words "the United States Court for China" were deleted from the definition of term "Federal district court" under the authority of Treaty between the United States and the Republic of China, 57 Stat. 767, which was signed in Washington, Jan. 11, 1943, ratified by the United States Senate on Feb. 11, 1943, ratified by the President on May 4, 1943, and ratified by the Republic of China on Feb. 4, 1943, by which the United States relinquished all extraterritorial jurisdiction and rights in China.

Congress by private act Dec. 22, 1944, ch. 691, 58 Stat. 1086, provided for the relief of certain former employees of the United States Court for China for the period of July 1, 1942 to May 20, 1943, on which date the Court ceased to exist.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia".

Act June 25, 1936, substituted "district court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia".

§ 143. Registrar; designation; station; supervision by Secretary of Commerce

The Secretary of Commerce may authorize such Foreign Service officer as Secretary of State shall make available to perform duties of China Trade Act Registrar under his direction. The official station of the registrar shall be in China at a place to be designated by the Secretary. All functions vested in the registrar by this chapter shall be administered by him under the supervision of the Secretary; except that upon appeal to the Secretary in such manner as he shall by regulation prescribe, any action of the registrar may be affirmed, modified, or set aside by the Secretary as he deems advisable.

(Sept. 19, 1922, ch. 346, § 3, 42 Stat. 850; 1939 Reorg. Plan No. II, § 1(d), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1431.)

TRANSFER OF FUNCTIONS

Secretary of Commerce may authorize such Foreign Service officer as Secretary of State shall make available to perform duties of China Trade Act Registrar under direction of Secretary of Commerce to conform to 1939 Reorg. Plan No. II, set out in the Appendix to Title 5, Government Organization and Employees.

The responsibilities of the Secretary of Commerce with regard to China Trade Act Registrar are exercised by the Deputy Assistant Secretary for International Commerce in the Domestic and International Business Administration of the Department of Commerce, with the power of redelegation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 142 of this title; title 18 section 6001.

§ 144. China trade corporations

(a) Incorporation

Three or more individuals (hereinafter in this chapter referred to as "incorporators"), a majority of whom are citizens of the United States, may, as hereinafter in this chapter provided, form a District of Columbia corporation for the purpose of engaging in business within China.

(b) Articles of incorporation

The incorporators may adopt articles of incorporation which shall be filed with the Secretary at his office in the District of Columbia and may thereupon make application to the Secretary for a certificate of incorporation in such manner and form as shall be by regulation prescribed. The articles of incorporation shall state—

(1) The name of the proposed China Trade Act corporation, which shall end with the legend, "Federal Inc. U.S.A.", and which shall not, in the opinion of the Secretary, be likely in any manner to mislead the public;

(2) The location of its principal office, which shall be in the District of Columbia;

(3) The particular business in which the corporation is to engage;

(4) The amount of the authorized capital stock, the designation of each class of stock, the terms upon which it is to be issued, and the number and par value of the shares of each class of stock;

(5) The duration of the corporation, which may be perpetual or for a limited period;

(6) The names and addresses of at least three individuals (a majority of whom, at the time of designation and during their term of office, shall be citizens of the United States), to be designated by the incorporators, who shall serve as temporary directors; and

(7) The fact that an amount equal to 25 per centum of the amount of the authorized capital stock has been in good faith subscribed to.

(c) Prohibited transactions

A China Trade Act corporation shall not engage in the business of discounting bills, notes, or other evidences of debt, of receiving deposits, of buying and selling bills of exchange, or of issuing bills, notes, or other evidences of debt, for circulation as money; nor engage in any other form of banking business; nor engage in any form of insurance business; nor engage in, nor be formed to engage in, the business of owning or operating any vessel, unless the controlling interest in such corporation is owned by citizens of the United States, within the meaning of section 802 of title 46.

(d) Capital stock requirements

No certificate of incorporation shall be delivered to a China Trade Act corporation and no incorporation shall be complete until at least 25 per centum of its authorized capital stock has been paid in cash, or, in accordance with the provisions of section 148 of this title, in real or personal property which has been placed in the custody of the directors, and such corporation has filed a statement to this effect under oath with the registrar within six months after the issuance of its certificate of incorporation, except that the registrar may grant additional time for the filing of such statement upon application made prior to the expiration of such six months. If any such corporation transacts business in violation of this subdivision of this section or fails to file such statement within six months, or within such time as the registrar prescribes upon such application, the registrar shall institute proceedings under section 154 of this title for the revocation of the certificate.

(Sept. 19, 1922, ch. 346, § 4, 42 Stat. 850; Feb. 26, 1925, ch. 345, §§ 1-5, 43 Stat. 995; June 25, 1938, ch. 696, § 1, 52 Stat. 1195.)

AMENDMENTS

1938—Subsec. (b)(5). Act June 25, 1938, amended subsec. (b)(5) generally.

1925—Act Feb. 26, 1925 amended subsecs. (a), (b)(6), (7), and (c), and added subsec. (d).

EFFECTIVE DATE OF 1938 AMENDMENT

Act June 25, 1938, provided that the amendment shall apply to all China Trade Act corporations created after the date of enactment of the act.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 148 of this title.

§ 144a. Incorporation fee for perpetual existence.

Any China Trade Act corporation existing on June 25, 1938, may make its existence perpetual only upon application to the Secretary of Commerce to amend its charter in that respect and upon payment of a fee equivalent to the incorporation fee. Upon receipt of such application and the payment of such prescribed fee, the Secretary shall approve such application and the charter of the corporation shall be amended accordingly.

(June 25, 1938, ch. 696, § 2, 52 Stat. 1196.)

CODIFICATION

Section was not enacted as part of the China Trade Act, 1922, which comprises this chapter.

§ 145. Certificate of incorporation

The Secretary shall, upon the filing of such application, issue a certificate of incorporation certifying that the provisions of this chapter have been complied with and declaring that the incorporators are a body corporate, if (a) an incorporation fee of $100 has been paid him; (b) he finds that the articles of incorporation and statements therein conform to the requirements of, and that the incorporation is authorized by, this chapter; and (c) he finds that such corporation will aid in developing markets in China for goods produced in the United States. A copy of the articles of incorporation shall be made a part of the certificate of incorporation and printed in full thereon. Any failure, previous to the issuance of the certificate of incorporation, by the incorporators or in respect to the application for the certificate of incorporation, to conform to any requirement of law which is a condition precedent to such issuance, may not subsequent thereto be held to invalidate the certificate of incorporation or alter the legal status of any act of a China Trade Act corporation, except in proceedings instituted by the registrar for the revocation of the certificate of incorporation.

(Sept. 19, 1922, ch. 346, § 5, 42 Stat. 850.)

§ 146. General powers of corporation

In addition to the powers granted elsewhere in this chapter, a China Trade Act corporation—

(a) Shall have the right of succession during the existence of the corporation;

(b) Shall have a corporate seal and may, with the approval of the Secretary, alter it;

(c) May sue and be sued;

(d) Shall have the right to transact the business authorized by its articles of incorporation and such further business as is properly connected therewith or necessary and incidental thereto;

(e) May make contracts and incur liabilities;

(f) May acquire and hold real or personal property, necessary to effect the purpose for which it is formed, and dispose of such property when no longer needed for such purposes;

(g) May borrow money and issue its notes, coupon or registered bonds, or other evidences of debt, and secure their payment by a mortgage of its property; and

(h) May establish such branch offices at such places in China as it deems advisable.

(Sept. 19, 1922, ch. 346, § 6, 42 Stat. 851; Feb. 26, 1925, ch. 345, § 6, 43 Stat. 996.)

AMENDMENTS

1925—Act Feb. 26, 1925, substituted "Shall" for "May" in par. (b).

TREATY

Par. (h) of this section has been affected by the 1943 Treaty between United States of America and the Republic of China, 57 Stat. 767, in which the United States relinquished all extraterritorial jurisdiction and rights in China. See Codification note set out under section 142 of this title.

§ 146a. Jurisdiction of suits by or against China Trade Act corporation

The Federal district courts shall have exclusive original jurisdiction of all suits to which a China Trade Act corporation, or a stockholder, director, or officer thereof in his capacity as such, is a party. Suit against the corporation may be brought in the United States District Court for the District of Columbia or in the Federal district court for any district in which the corporation has an agent and is engaged in doing business.

(Sept. 19, 1922, ch. 346, § 20(a), 42 Stat. 855; Feb. 26, 1925, ch. 345, § 10, 43 Stat. 996; June 25, 1936, ch. 804, 49 Stat. 1921; Treaty of Jan. 11, 1943, 57 Stat. 767; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CODIFICATION

Section comprises subsec. (a) of section 20 of act Sept. 19, 1922, as amended by act Feb. 26, 1925. Subsec. (b) of section 20 is classified to section 160 of this title.

In the first sentence, the words "(except as provided by the Act entitled 'An Act creating a United States Court for China and prescribing the jurisdiction thereof,' approved June 30, 1906, as amended)" have been omitted because that Act (formerly classified to sections 191 to 197, 199, 200, and 202 of Title 22, Foreign Relations and Intercourse) was repealed by act June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948.

The provision in the second sentence that suits against the China Trade Act corporation might also be brought in the United States Court for China was omitted as that court is no longer in operation. By the treaty of Jan. 11, 1943, between the United States and China, the United States relinquished extraterritorial rights in China. See Codification note set out under section 142 of this title.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia".

Act June 25, 1936, changed name of "Supreme Court of the District of Columbia" to "district court of the United States for the District of Columbia".

§ 147. Stock; issuance at par value

Each share of the original or any subsequent issue of stock of a China Trade Act corporation shall be issued at not less than par value, and shall be paid for in cash, or in accordance with the provisions of section 148 of this title, in real or personal property which has been placed in the custody of the directors. No such share shall be issued until the amount of the par value thereof has been paid the corporation; and when issued, each share shall be held to be full paid and nonassessable; except that if any share is, in violation of this section, issued without the amount of the par value thereof having been paid to the corporation, the holder of such share shall be liable in suits by creditors for the difference between the amount paid for such share and the par value thereof.

(Sept. 19, 1922, ch. 346, § 7, 42 Stat. 851; Feb. 26, 1925, ch. 345, § 7, 43 Stat. 996.)

AMENDMENTS

1925—Act Feb. 26, 1925, substituted "not less than par value" for "par value only".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 148 of this title.

§ 148. Payment of stock in real or personal property

No share of stock of a China Trade Act corporation shall, for the purposes of section 147 of this title or of subdivision (d) of section 144 of this title, be held paid in real or personal property unless (1) a certificate describing the property and stating the value at which it is to be received has been filed by the corporation with the Secretary or the registrar in such manner as shall be by regulation prescribed, and a fee to be fixed by the Secretary or the registrar, respectively, to cover the cost of any necessary investigation has been paid, and (2) the Secretary or the registrar, as the case may be, finds and has certified to the corporation that such value is not more than the fair market value of the property.

(Sept. 19, 1922, ch. 346, § 8, 42 Stat. 851.)

REFERENCES IN TEXT

Subdivision (d) of section 144 of this title, referred to in text, in the original read "paragraph (7) of subdivision (b) of section 4", which is classified to section 144(b)(7) of this title. Part of the provisions of par. (7) were transferred to subd. (d) of section 144 by act Feb. 26, 1925, ch. 345, §§ 3, 5, 43 Stat. 995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 144, 147 of this title.

§ 149. Bylaws

The bylaws may provide—

(a) The time, place, manner of calling, giving notice, and conduct of, and determination of a quorum for, the meetings, annual or special, of the stockholders or directors;

(b) The number, qualifications, and manner of choosing and fixing the tenure of office and compensation of all directors; but the number of such directors shall be not less than three, and a majority of the directors, and the president and the treasurer, or each officer holding a corresponding office, shall, during their tenure of office, be citizens of the United States resident in China.

(c) The manner of calling for and collecting payments upon shares of stock, the penalties and forfeitures for nonpayment, the preparation of certificates of the shares, the manner of recording their sale or transfer, and the manner of their representation at stockholders' meetings.

(Sept. 19, 1922, ch. 346, § 9, 42 Stat. 852; Feb. 26, 1925, ch. 345, § 8, 43 Stat. 996.)

AMENDMENT

1925—Act Feb. 26, 1925, amended par. (b) generally.

§ 150. Stockholders' meetings

(a) Time of first meeting; quorum

Within six months after the issuance of the certificate of incorporation of a China Trade Act corporation there shall be held a stockholders' meeting either at the principal office or a branch office of the corporation. Such meeting shall be called by a majority of the directors named in the articles of incorporation and each stockholder shall be given at least ninety days' notice of the meeting either in person or by mail. The holders of two-thirds of the voting shares, represented in person or by proxy, shall constitute a quorum at such meetings authorized to transact business. At this meeting or an adjourned meeting thereof a code of bylaws for the corporation shall be adopted by a majority of the voting shares represented at the meeting.

(b) Questions for determination only by stockholders

The following questions shall be determined only by the stockholders at a stockholders' meeting:

(1) Adoption of the bylaws;

(2) Amendments to the articles of incorporation or bylaws;

(3) Authorization of the sale of the entire business of the corporation or of an independent branch of such business;

(4) Authorization of the voluntary dissolution of the corporation; and

(5) Authorization of application for the extension of the period of duration of the corporation.

(c) Authorization of amendments to articles of incorporation

The adoption of any such amendment or authorization shall require the approval of at least two-thirds of the voting shares. No amendment to the articles of incorporation or authorization for dissolution or extension shall take effect until (1) the corporation files a certificate with the Secretary stating the action taken, in such manner and form as shall be by regulation prescribed, and (2) such amendment or authorization is found and certified by the Secretary to conform to the requirements of this chapter.

(d) Filing of bylaws and amendments and minutes of stockholders' meetings with registrar

A certified copy of the bylaws and amendments thereof and of the minutes of all stockholders' meetings of the corporation shall be filed with the registrar.

(Sept. 19, 1922, ch. 346, § 10, 42 Stat. 852; Feb. 26, 1925, ch. 345, § 9, 43 Stat. 996.)

AMENDMENTS

1925—Act Feb. 26, 1925, amended the third sentence of subsec. (a) by inserting ", represented in person or by proxy,".

§ 151. Directors

The directors designated in the articles of incorporation shall, until their successors take office, direct the exercise of all powers of a China Trade Act corporation except such as are conferred upon the stockholders by law or by the articles of incorporation or bylaws of the corporation. Thereafter the directors elected in accordance with the bylaws of the corporation shall direct the exercise of all powers of the corporation except such as are so conferred upon the stockholders. In the exercise of such powers the directors may appoint and remove and fix the compensation of such officers and employees of the corporation as they deem advisable.

(Sept. 19, 1922, ch. 346, § 11, 42 Stat. 852.)

§ 152. Reports; records for public inspection

(a) For the purposes of this chapter the fiscal year of a China Trade Act corporation shall correspond to the calendar year. The corporation shall make and file with the registrar, in such manner and form and at such time as shall be by regulation prescribed, a report of its business for each such fiscal year and of its financial condition at the close of the year. The corporation shall furnish a true copy of the report to each of its stockholders.

(b) The registrar shall file with the Secretary copies of all reports, certificates, and certified copies received or issued by the registrar under the provisions of this chapter. The Secretary shall file with the registrar copies of all applications for a certificate of incorporation, and certificates received or issued by the Secretary under the provisions of this chapter. All such papers shall be kept on record in the offices of the registrar and the Secretary, and shall be available for public inspection under such regulations as may be prescribed.

(Sept. 19, 1922, ch. 346, § 12, 42 Stat. 853.)

§ 153. Dividends

Dividends declared by a China Trade Act corporation shall be derived wholly from the surplus profits of its business.

(Sept. 19, 1922, ch. 346, § 13, 42 Stat. 853.)

§ 154. Investigations by registrar; revocation of certificate of incorporation

The registrar may, in order to ascertain if the affairs of a China Trade Act corporation are conducted contrary to any provision of this chapter, or any other law, or any treaty of the United States, or the articles of incorporation or bylaws of the corporation, investigate the affairs of the corporation. The registrar, whenever he is satisfied that the affairs of any China Trade Act corporation are or have been so conducted, may institute in the United States Court for China proceedings for the revocation of the certificate of incorporation of the corporation. The court may revoke such certificate if it finds the affairs of such corporation have been so conducted. Pending final decision in the revocation proceedings the court may at any time, upon application of the registrar or upon its own motion, make such orders in respect to the conduct of the affairs of the corporation as it deems advisable.

(Sept. 19, 1922, ch. 346, § 14, 42 Stat. 853.)

REFERENCES IN TEXT

The United States Court for China, referred to in the text, has been abolished. See Codification note under section 142 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 144 of this title.

§ 155. Authority of registrar in obtaining evidence

(a) Subpena for attendance of witness and production of records, etc.

For the efficient administration of the functions vested in the registrar by this chapter, he may require, by subpoena issued by him or under his direction, (1) the attendance of any witness and the production of any book, paper, document, or other evidence from any place in China at any designated place of hearing in China, or, if the witness is actually resident or temporarily sojourning outside of China, at any designated place of hearing within fifty miles of the actual residence or place of sojourn of such witness, and (2) the taking of a deposition before any designated person having power to administer oaths. In the case of a deposition, the testimony shall be reduced to writing by the person taking the deposition or under his direction, and shall then be subscribed by the deponent. The registrar, or any officer, employee, or agent of the United States authorized in writing by him, may administer oaths and examine any witness. Any witness summoned or whose deposition is taken under this section shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

(b) Aid of Federal district court

In the case of failure to comply with any subpoena or in the case of the contumacy of any witness before the registrar or any individual so authorized by him, the registrar or such individual may invoke the aid of any Federal district court. Such court may thereupon order the witness to comply with the requirements of such subpoena and to give evidence touching the matter in question. Any failure to obey such order may be punished by such court as a contempt thereof.

(c) Repealed. Pub. L. 91-452, title II, § 217, Oct. 15, 1970, 84 Stat. 929

(d) Access of registrar or his employee to books and records

For the efficient administration of the functions vested in the registrar by this chapter, he, or any officer, employee, or agent of the United States authorized in writing by him, shall at all reasonable times, for the purpose of examination, have access to and the right to copy any book, account, record, paper, or correspondence relating to the business or affairs of a China Trade Act corporation. Any person who upon demand refuses the registrar, or any duly authorized officer, employee, or agent, such access or opportunity to copy, or hinders, obstructs, or resists him in the exercise of such right, shall be liable to a penalty of not more than $5,000 for each such offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States.

(Sept. 19, 1922, ch. 346, § 15, 42 Stat. 853; Oct. 15, 1970, Pub. L. 91-452, title II, § 217, 84 Stat. 929.)

AMENDMENTS

1970—Subsec. (c). Pub. L. 91-452 struck out subsec. (c) which granted immunity from prosecution for any natural person testifying in obedience to a subpoena.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

CROSS REFERENCES

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Treaty between United States and China nullifying extraterritorial rights, see Codification note set out under section 142 of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

Application of section under rule 42, see note by Advisory Committee under rule 42, Title 18, Appendix, Crimes and Criminal Procedure.

§ 156. Dissolution of corporation; trustees

In case of the voluntary dissolution of a China Trade Act corporation or revocation of its certificate of incorporation, the directors of the corporation shall be trustees for the creditors and stockholders of the corporation; except that upon application to the United States Court for China by any interested party, or upon the motion of any court of competent jurisdiction in any proceeding pending before it, the court may in its discretion appoint as the trustees such persons, other than the directors, as it may determine. The trustees are invested with the powers, and shall do all acts, necessary to wind up the affairs of the corporation and divide among the stockholders according to their respective interests the property of the corporation remaining after all obligations against it have been settled. For the purposes of this section the trustees may sue and be sued in the name of the corporation and shall be jointly and severally liable to the stockholders and creditors of the corporation to the extent of the property coming into their hands as trustees.

(Sept. 19, 1922, ch. 346, § 16, 42 Stat. 854.)

REFERENCES IN TEXT

The United States Court for China, referred to in the text, has been abolished. See Codification note under section 142 of this title.

§ 157. Regulations and fees; disposition of fees and penalties

(a) The Secretary is authorized to make such regulations as may be necessary to carry into effect the functions vested in him or in the registrar by this chapter.

(b) The Secretary is authorized to prescribe and fix the amount of such fees (other than the incorporation fee) to be paid him or the registrar for services rendered by the Secretary or the registrar to any person in the administration of the provisions of this chapter. All fees and penalties paid under this chapter shall be covered into the Treasury of the United States as miscellaneous receipts.

(Sept. 19, 1922, ch. 346, § 17, 42 Stat. 854.)

§ 158. False or fraudulent statements prohibited; penalties

No stockholder, director, officer, employee, or agent of a China Trade Act corporation shall make, issue, or publish any statement, written or oral, or advertisement in any form, as to the value or as to the facts affecting the value of stocks, bonds, or other evidences of debt, or as to the financial condition or transactions, or facts affecting such condition or transactions, of such corporation if it has issued or is to issue stocks, bonds, or other evidences of debt, whenever he knows or has reason to believe that any material representation in such statement or advertisement is false. No stockholder, director, officer, employee, or agent of a China Trade Act corporation shall, if all the authorized capital stock thereof has not been paid in, make, issue, or publish any written statement or advertisement, in any form, stating the amount of the authorized capital stock without also stating as the amount actually paid in, a sum not greater than the amount paid in. Any person violating any provisions of this section shall, upon conviction thereof, be fined not more than $5,000 or imprisoned not more than ten years, or both.

(Sept. 19, 1922, ch. 346, § 18, 42 Stat. 855.)

§ 159. Unauthorized use of legend; penalty

No individual, partnership, or association, or corporation not incorporated under this chapter or under a law of the United States, shall engage in business within China under a name in connection with which the legend "Federal Inc. U.S.A." is used. Any person violating this section shall, upon conviction thereof, be fined not more than $1,000 for each violation.

(Sept. 19, 1922, ch. 346, § 19, 42 Stat. 855.)

§ 160. Maintenance of agent for service

Every China Trade Act corporation shall maintain in the District of Columbia a person as its accredited agent, upon whom legal process may be served, in any suit to be brought in the United States District Court for the District of Columbia, and who is authorized to enter an appearance in its behalf. In the event of the death or inability to serve, or the resignation or removal, of such person, such corporation shall, within such time as the Secretary by regulation prescribes, appoint a successor. Such corporation shall file with the Secretary a certified copy of each power of attorney appointing a person under this section, and a certified copy of the written consent of each person so appointed.

(Sept. 19, 1922, ch. 346, § 20(b), 42 Stat. 855; Feb. 26, 1925, ch. 345, § 10, 43 Stat. 996; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CODIFICATION

Section comprises subsec. (b) of section 20 of act Sept. 19, 1922, as added by act Feb. 26, 1925. Subsec. (a) of section 20 is classified to section 146a of this title.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia."

Act June 25, 1936, changed name of "Supreme Court of the District of Columbia" to "district court of the United States for the District of Columbia".

§ 161. Alteration, amendment, or repeal

The Congress of the United States reserves the right to alter, amend, or repeal any provision of this chapter.

(Sept. 19, 1922, ch. 346, § 28, 42 Stat. 856.)

§ 162. Creation of China corporations restricted

No corporation for the purpose of engaging in business within China shall be created under any law of the United States other than this chapter.

(Sept. 19, 1922, ch. 346, § 29, as added Feb. 26, 1925, ch. 345, § 13, 43 Stat. 997.)

CHAPTER 5—THE BUREAU OF FOREIGN AND DOMESTIC COMMERCE

SUBCHAPTER I—ESTABLISHMENT AND FUNCTIONS

Sec.
171. Repealed.
172. Transfer of duties of Department of Labor; special investigations.
173, 174. Repealed.
175. Additional duties of Bureau.
176. Collection of commercial statistics.
176a. Confidential nature of information furnished Bureau.
176b, 177. Repealed.
178. Collection of statistics of foreign and interstate commerce and transportation.
179 to 181. Repealed.
182. Statistics of manufactures.
183. Report of statistics.
184 to 187. Repealed.
188. Publication of commercial information.
189, 189a. Repealed.
190. Discussions in commercial reports of partisan questions.
191. Terms of measure, weight, and money in commercial reports.
192 to 193. Repealed.
194, 195. Omitted.

SUBCHAPTER II—FOREIGN COMMERCE SERVICE

197 to 198. Repealed.

SUBCHAPTER I—ESTABLISHMENT AND FUNCTIONS

§ 171. Repealed. Pub. L. 90-620, § 3, Oct. 22, 1968, 82 Stat. 1308

Section, acts Aug. 23, 1912, ch. 350, § 1, 37 Stat. 407; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736, directed that, as of July 12, 1912, the Bureau of Manufactures and the Bureau of Statistics, both of the Department of Commerce, be consolidated into one bureau to be known as the Bureau of Foreign and Domestic Commerce, and that the duties required by law to be performed by the Bureau of Manufactures and the Bureau of Statistics be transferred to and performed by the Bureau of Foreign and Domestic Commerce. Pursuant to the powers transferred to and vested in the Secretary of Commerce under Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees, which transferred the functions of officers of the Department of Commerce and the functions of all agencies and employees of such Department, with a few exceptions, to the Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, the Secretary, through internal reorganizations, has reassigned the functions of the Bureau of Foreign and Domestic Commerce to other offices of the Department.

§ 172. Transfer of duties of Department of Labor; special investigations

The duties of the Department of Labor, or Bureau of Labor, "to ascertain, at as early a date as possible, and whenever industrial changes shall make it essential, the cost of producing articles at the time dutiable in the United States, in leading countries where such articles are produced, by fully specified units of production, and under a classification showing the different elements of cost, or approximate cost, of such articles of production, including the wages paid in such industries per day, week, month, or year, or by the piece; and hours employed per day; and the profits of manufacturers and producers of such articles; and the comparative cost of living, and the kind of living; what articles are controlled by trusts or other combinations of capital, business operations, or labor, and what effect said trusts, or other combinations of capital, business operations, or labor have on production and prices", are, as of August 23, 1912, transferred to and shall be discharged by the Bureau of Foreign and Domestic Commerce, and it shall be also the duty of said Bureau of Foreign and Domestic Commerce to make such special investigation and report on particular subjects when required to do so by the President or either House of Congress.

(Aug. 23, 1912, ch. 350, § 1, 37 Stat. 407.)

References in Text

The quoted language of this section was originally enacted by act June 13, 1888, ch. 389, § 7, 25 Stat. 183, which charged the duties to the Commissioner of Labor.

Transfer of Functions

The functions of all other officers of the Department of Commerce and the functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any such officers, agencies, and employees, by Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees. Through internal reorganizations the functions of the Bureau of Foreign and Domestic Commerce have been reassigned to other offices of the Department of Commerce.

§§ 173, 174. Repealed. Pub. L. 87-826, § 3, Oct. 15, 1962, 76 Stat. 953

Section 173, R.S. § 336; acts Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Aug. 23, 1912, ch. 350, § 1, 37, Stat. 407; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Jan. 25, 1919, ch. 10, 40 Stat. 1055; Mar. 1, 1919, ch. 86, 40 Stat. 1256, required annual reports on statistics of commerce and navigation, and is now covered by section 301 et seq. of Title 13, Census.

Section 174, R.S. § 337; acts Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 407; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Mar. 1, 1919, ch. 86, 40 Stat. 1256; Aug. 31, 1961, Pub. L. 87-191, § 2, 75 Stat. 419, prescribed regulations required to be observed by collectors of customs. See section 301 et seq. of Title 13, Census.

Effective Date of Repeal

Sections repealed effective 180 days after Oct. 15, 1962, except that the last sentence of par. Fifth of section 174 of this title shall be repealed Oct. 15, 1962, see section 4 of Pub. L. 87-826, set out as a note under section 301 of Title 13, Census.

Savings Provisions

Section 3 of Pub. L. 87-826 provided in part that any rights or liabilities existing under sections 173, 174, 177, 179, 181, 184 to 187, and 193 of this title, sections 92 and 95 of Title 46, Shipping, and section 1486 of Title 48, Territories and Insular Possessions, and any proceedings instituted under or growing out of, any of such sections or parts thereof, shall not be affected by the repeal of such sections.

§ 175. Additional duties of Bureau

It shall be the province and duty of the Bureau of Foreign and Domestic Commerce, under the direction of the Secretary of Commerce, to foster, promote, and develop the various manufacturing industries of the United States, and markets for the same at home and abroad, domestic and foreign, by gathering, compiling, publishing, and supplying all available and useful information concerning such industries and such markets, and by such other methods and means as may be prescribed by the Secretary of Commerce or provided by law.

(Feb. 14, 1903, ch. 552, § 5, 32 Stat. 827; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 407; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Aug. 13, 1946, ch. 957, title XI, § 1131(23), 60 Stat. 1037.)

AMENDMENTS

1946—Act Aug. 13, 1946, repealed last sentence relating to duties of consular officers with respect to the Bureau.

CHANGE OF NAME

Act Mar. 4, 1913, substituted the "Secretary of Commerce" for "Secretary of Commerce and Labor".

EFFECTIVE DATE OF 1946 AMENDMENT

Section 1141 of act Aug. 13, 1946, provided that the amendment of section by act Aug. 13, 1946, shall become effective three months from Aug. 13, 1946.

TRANSFER OF FUNCTIONS

For transfer of functions of the Bureau of Foreign and Domestic Commerce, see Transfer of Functions note set out under section 172 of this title.

Act Aug. 23, 1912, transferred certain duties of the Department or Bureau of Labor to the Bureau of Foreign and Domestic Commerce.

Act Apr. 5, 1906, abolished the grade of commercial agent and commercial agent's function of helping to gather foreign trade information, reference to which formerly appeared in the last sentence of this section. Such last sentence was subsequently repealed by Act Aug. 13, 1946.

§ 176. Collection of commercial statistics

A purpose of the Bureau of Foreign and Domestic Commerce is the collection, arrangement, and classification of such statistical information as may be procured, showing, or tending to show, each year the condition of the manufactures, domestic trade, currency, and banks of the several States and Territories.

(R.S. § 335; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 241; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 407.)

AMENDMENTS

1877—Act Feb. 27, 1877, struck out "agriculture" immediately preceding "manufactures".

TRANSFER OF FUNCTIONS

For transfer of functions of the Bureau of Foreign and Domestic Commerce, see Transfer of Functions note set out under section 172 of this title.

Act Aug. 23, 1912, transferred certain duties of the Department or Bureau of Labor to the Bureau of Foreign and Domestic Commerce.

PRIOR PROVISIONS

R.S. § 335 derived from Res. June 15, 1844, No. 16, 5 Stat. 719.

§ 176a. Confidential nature of information furnished Bureau

Any statistical information furnished in confidence to the Bureau of Foreign and Domestic Commerce by individuals, corporations, and firms shall be held to be confidential, and shall be used only for the statistical purposes for which it is supplied. The Director of the Bureau of Foreign and Domestic Commerce shall not permit anyone other than the sworn employees of the Bureau to examine such individual reports, nor shall he permit any statistics of domestic commerce to be published in such manner as to reveal the identity of the individual, corporation, or firm furnishing such data.

(Jan. 27, 1938, ch. 11, § 1, 52 Stat. 8.)

TRANSFER OF FUNCTIONS

For transfer of functions of the Bureau of Foreign and Domestic Commerce, see Transfer of Functions note set out under section 172 of this title.

§ 176b. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

Section, act June 27, 1938, ch. 11, § 2, 52 Stat. 8, relating to disclosure by employee of information, is now covered by section 1905 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF REPEAL

Section 20 of act June 25, 1948, provided that the repeal of this section shall be effective Sept. 1, 1948.

§ 177. Repealed. Pub. L. 87-826, § 3, Oct. 15, 1962, 76 Stat. 953

Section, acts July 16, 1892, ch. 196, § 1, 27 Stat. 197; Mar. 3, 1893, ch. 211, § 1, 27 Stat. 689; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 407; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736, related to returns of exports to foreign countries leaving the United States by rail. See section 301 et seq. of Title 13, Census.

EFFECTIVE DATE OF REPEAL

Repeal of section effective 180 days after Oct. 15, 1962, see section 4 of Pub. L. 87-826, set out as a note under section 301 of Title 13, Census.

SAVINGS PROVISIONS

See section 3 of Pub. L. 87-826, set out as a note under sections 173 and 174 of this title.

§ 178. Collection of statistics of foreign and interstate commerce and transportation

It shall be the duty of the officer in charge of the Bureau of Foreign and Domestic Commerce to gather and collate statistics and facts relating to commerce with foreign nations and among the several States, the railroad systems of this and other countries, the construction and operation of railroads, the actual cost of such construction and operation of railroads, the actual cost of transporting freight and passengers on railroads, and on canals, rivers, and other navigable waters of the United States, the charges imposed for such transportation of freight and passengers, and the tonnage transported.

(Mar. 3, 1875, ch. 129, § 1, 18 Stat. 352; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 407; Mar. 4, 1913, ch. 141,

§ 1, 37 Stat. 736; May 29, 1928, ch. 901, § 1 (105), 45 Stat. 994.)

AMENDMENTS

1928—Act May 29, 1928, discontinued the report of the Bureau of Foreign and Domestic Commerce to Congress on the commercial relations of the United States.

TRANSFER OF FUNCTIONS

For transfer of functions of the Bureau of Foreign and Domestic Commerce, see Transfer of Functions note set out under section 172 of this title.

Act Aug. 23, 1912, transferred certain duties of the Department or Bureau of Labor to the Bureau of Foreign and Domestic Commerce.

Act Feb. 14, 1903, transferred the Bureau of Statistics from the Treasury Department to the Department of Commerce and Labor.

§ 179. Repealed. Pub. L. 87-826, § 3, Oct. 15, 1962, 76 Stat. 953

Section, R.S. § 339; acts Mar. 3, 1875, ch. 129, § 1, 18 Stat. 352; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 407; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Mar. 1, 1919, ch. 86, 40 Stat. 1256, required quarterly reports of exports and imports. See section 301 et seq. of Title 13, Census.

EFFECTIVE DATE OF REPEAL

Repeal of section effective 180 days after Oct. 15, 1962, see section 4 of Pub. L. 87-826, set out as a note under section 301 of Title 13, Census.

SAVINGS PROVISIONS

See section 3 of Pub. L. 87-826, set out as a note under sections 173 and 174 of this title.

§ 180. Repealed. Feb. 28, 1933, ch. 131, § 1, 47 Stat. 1349

Section, R.S. § 340, related to statements of vessels registered.

§ 181. Repealed. Pub. L. 87-826, § 3, Oct. 15, 1962, 76 Stat. 953

Section, R.S. § 341; acts Aug. 23, 1912, ch. 350, § 1, 37 Stat. 407; Mar. 1, 1919, ch. 86, 40 Stat. 1256, required preparation of an annual statement of merchandise. See section 301 et seq. of Title 13, Census.

EFFECTIVE DATE OF REPEAL

Repeal of section effective 180 days after Oct. 15, 1962, see section 4 of Pub. L. 87-826, set out as a note under section 301 of Title 13, Census.

SAVINGS PROVISIONS

See section 3 of Pub. L. 87-826, set out as a note under sections 173 and 174 of this title.

§ 182. Statistics of manufactures

The Director of the Bureau of Foreign and Domestic Commerce shall collect, digest, and arrange, for the use of Congress, the statistics of the manufactures of the United States, their localities, sources of raw material, markets, exchanges with the producing regions of the country, transportation of products, wages, and such other conditions as are found to affect their prosperity.

(R.S. § 342; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 407; Mar. 1, 1919, ch. 86, 40 Stat. 1256.)

CHANGE OF NAME

Act Mar. 1, 1919, substituted "Director" for "Chief".

TRANSFER OF FUNCTIONS

For transfer of functions of the Bureau of Foreign and Domestic Commerce, see Transfer of Functions note set out under section 172 of this title.

Act Aug. 23, 1912, transferred certain duties of the Department or Bureau of Labor to the Bureau of Foreign and Domestic Commerce.

PRIOR PROVISIONS

R.S. § 342 derived from act July 28, 1866, ch. 298, § 13, 14 Stat. 330.

§ 183. Report of statistics

The Secretary of Commerce shall make a report to Congress on the first Monday of January in each year, containing the results of the information collected during the preceding year, by the Bureau of Foreign and Domestic Commerce, upon the condition of the manufactures, domestic trade, currency, and banks of the several States and Territories.

(R.S. § 259; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 241; Feb. 14, 1903, ch. 552, § 9, 32 Stat. 829; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 407; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

AMENDMENTS

1877—Act Feb. 27, 1877, struck out "agriculture" immediately preceding "manufactures".

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

TRANSFER OF FUNCTIONS

For transfer of functions of the Bureau of Foreign and Domestic Commerce, see Transfer of Functions note set out under section 172 of this title.

Act Aug. 23, 1912, transferred certain duties of the Department or Bureau of Labor to the Bureau of Foreign and Domestic Commerce.

Act Feb. 14, 1903, transferred the Bureau of Statistics from the Treasury Department to the Department of Commerce and Labor.

PRIOR PROVISIONS

R.S. § 259 derived from acts Sept. 24, 1789, ch. 20, § 35, 1 Stat. 92; June 25, 1868, ch. 71, § 5, 15 Stat. 75; June 22, 1870, ch. 150, § 5, 16 Stat. 162.

§§ 184 to 187. Repealed. Pub. L. 87-826, § 3, Oct. 15, 1962, 76 Stat. 953

Section 184, R.S. § 263; acts Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 407; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Mar. 1, 1919, ch. 86, 40 Stat. 1256, requiring the printing of an annual report on commerce on navigation. See section 301 et seq. of Title 13, Census.

Section 185, R.S. § 251; acts Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736, required the Secretary of Commerce to prescribe the forms of annual statements to be submitted to Congress showing the actual state of commerce and navigation between the United States and foreign countries, or coastwise between the collection districts of the United States. See section 301 et seq. of Title 13.

Section 186, R.S. § 338, required the annual report of the statistics of commerce and navigation to state the kinds, quantities, and value of merchandise entered and cleared coastwise into and from the collection districts of the United States. See section 301 et seq. of Title 13.

Section 187, R.S. §§ 265, 3812; acts Jan. 12, 1895, ch. 23, § 17, 28 Stat. 603; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736, related to the printing of the statement of exports and imports. See section 301 et seq. of Title 13.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective 180 days after Oct. 15, 1962, see section 4 of Pub. L. 87-826, set out as a note under section 301 of Title 13, Census.

SAVINGS PROVISIONS

See section 3 of Pub. L. 87-826, set out as a note under sections 173 and 174 of this title.

§ 188. Publication of commercial information

The Secretary of Commerce shall publish official notifications, from time to time, of such commercial information communicated to him by diplomatic and consular officers, as he may deem important to the public interests, in such newspapers, not to exceed three in number, as he may select.

(R.S. § 211; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred the Bureau of Statistics from the Treasury Department to the Department of Commerce and Labor.

PRIOR PROVISIONS

R.S. § 211 derived from act Aug. 18, 1856, ch. 127, § 2, 11 Stat. 60.

§§ 189, 189a. Repealed. Pub. L. 91-412, § 3(b), (c), Sept. 25, 1970, 84 Stat. 864

Section 189, act May 15, 1936, ch. 405, § 1, 49 Stat. 1335, which authorized Secretary of Commerce to charge for lists of foreign buyers, special statistical services, special commodity news bulletins, and World Trade Directory reports and to deposit collections therefore in the Treasury as miscellaneous receipts, is now covered by sections 1525 and 1526 of this title.

Section 189a, act May 27, 1935, ch. 148, § 1, 49 Stat. 292, which authorized Department of Commerce to make special statistical studies (foreign trade, domestic trade, and other economic matters), to prepare from its records special statistical compilations, and to furnish transcripts (studies, tables, and other records), upon payment of actual cost by requesting person, firm, or corporations, is now covered by section 1525 of this title.

§ 190. Discussions in commercial reports of partisan questions

No part of the consular and other commercial reports of the Department of Commerce, including circular letters to chambers of commerce, discussing partisan political, religious, or moral questions shall be published.

(Feb. 25, 1885, ch. 150, 23 Stat. 324; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Department of Commerce" for "Department of Commerce and Labor".

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred the Bureau of Statistics from the Treasury Department to the Department of Commerce and Labor.

§ 191. Terms of measure, weight, and money in commercial reports

All terms of measure, weight, and money in the diplomatic, consular, and other commercial reports prepared, printed, published, and distributed by the Department of Commerce shall be reduced to and expressed in terms of measure, weight, and coin of the United States, as well as in the foreign terms.

(Feb. 9, 1903, ch. 530, 32 Stat. 813; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Department of Commerce" for "Department of Commerce and Labor".

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred the Bureau of Statistics from the Treasury Department to the Department of Commerce and Labor.

§§ 192, 192a. Repealed. Pub. L. 91-412, § 3(a), (b), Sept. 25, 1970, 84 Stat. 864

Section 192, acts Mar. 1, 1919, ch. 86, § 1, 40 Stat. 1256; May 27, 1935, ch. 148, § 2, 49 Stat. 293, which provided for deposit of moneys received for special statistical studies, compilations, and transcripts in a special account for payment of ordinary expenses incidental to the work and services of nongovernmental individuals and had originally provided for covering into the Treasury as miscellaneous receipts moneys received in payment of photographic and other mechanical reproduction of special statistical compilations from the records, is now covered by section 1526 of this title.

Section 192a, acts May 27, 1935, ch. 148, § 3, 49 Stat. 293; Aug. 7, 1946, ch. 770, § 1(4), 60 Stat. 866, required Secretary of Commerce to prescribe rules and regulations governing special statistical studies.

§ 193. Repealed. Pub. L. 87-826, § 3, Oct. 15, 1962, 76 Stat. 953

Section, act Jan. 5, 1923, ch. 23, § 2, 42 Stat. 1110, related to statements and reports for collectors of customs and Treasury Department. See section 301 et seq. of Title 13, Census.

EFFECTIVE DATE OF REPEAL

Repeal of section effective 180 days after Oct. 15, 1962, see section 4 of Pub. L. 87-826, set out as a note under section 301 of Title 13, Census.

SAVINGS PROVISIONS

See section 3 of Pub. L. 87-826, set out as a note under sections 173 and 174 of this title.

§§ 194, 195. Omitted

CODIFICATION

Section 194, act Jan. 5, 1923, ch. 23, § 1, 42 Stat. 1109, which transferred to the Department of Commerce from the Department of the Treasury the control and expense of operation of the office known as the Bureau of Customs Statistics under the jurisdiction of the Department of the Treasury, on Jan. 5, 1923, located in the customhouse, City of New York, State of New York, including all officers, clerks, and other employees of that bureau, official records, papers, mechanical and office equipment, furniture, and supplies in use on that date and which authorized the Secretary of Commerce to consolidate the Bureau of Customs Statistics with the Division of Statistics of the Bureau of Foreign and Domestic Commerce into one office, located in either Washington or New York, or partly in either place, in the discretion of the Secretary of Commerce, with the statistical bureau authorized to be located in New York under the jurisdiction and control of the Department of Commerce to continue to occupy the premises in the New York customhouse which were on Jan. 5, 1923, occupied by the Bureau of Customs Statistics, and with additional space as needed to be assigned in the same building for its use by the Secretary of the Treasury upon request of the Secretary of Commerce, has been omitted as executed. Pursuant to the authority vested in the Secretary of Commerce by Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees, the Secretary has reassigned the functions of the Division of Statistics of the Bureau of Foreign and Domestic Commerce to other offices of the Department of Commerce.

Section 195, acts Apr. 18, 1930, ch. 184, 46 Stat. 198; Feb. 23, 1931, ch. 280, 46 Stat. 1334, which provided for the payment of transportation expenses of employees, is now covered by section 5701 et seq. of Title 5, Government Organization and Employees.

SUBCHAPTER II—FOREIGN COMMERCE SERVICE

§§ 197 to 197d. Repealed. Aug. 13, 1946, ch. 957, title XI, § 1131(54), 60 Stat. 1039

Section 197, act Mar. 3, 1927, ch. 365, § 1, 44 Stat. 1394, related to establishment of Foreign Commerce Service.

Section 197a, act Mar. 3, 1927, ch. 365, § 2, 44 Stat. 1394, related to duties of officers.

Section 197b, acts Mar. 3, 1927, ch. 365, § 3, 44 Stat. 1394; Apr. 12, 1930, ch. 142, 46 Stat. 163, related to appointment of officers, assignments for duty, and allowances.

Section 197c, act Mar. 3, 1927, ch. 365, § 4, 44 Stat. 1395, related to employment of clerks and assistants.

Section 197d, act Mar. 3, 1927, ch. 365, § 5, 44 Stat. 1396, related to status of officer while serving abroad.

EFFECTIVE DATE OF REPEAL

Repeal of sections was made effective three months from Aug. 13, 1946, by section 1141 of act Aug. 13, 1946, ch. 957, title XI, 60 Stat. 1040.

§ 197e. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 647

Section, act Mar. 3, 1927, ch. 365, § 6, 44 Stat. 1396, provided for travel and subsistence allowance to officers, employees, etc., of Bureau of Foreign and Domestic Commerce on duty abroad or away from duty post.

§ 197f. Repealed. Aug. 13, 1946, ch. 957, title XI, § 1131(54), 60 Stat. 1039

Section, act Mar. 3, 1927, ch. 365, § 7, 44 Stat. 1396, related to availability of appropriation during fiscal year ending June 30, 1926, and thereafter for the Department of Commerce for commercial attachés in Europe, South or Central America and elsewhere.

EFFECTIVE DATE OF REPEAL

Repeal of section was made effective three months from Aug. 13, 1946, by section 1141 of act Aug. 13, 1946, ch. 957, title XI, 60 Stat. 1040.

§ 198. Repealed. Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111

Section, acts Jan. 25, 1929, ch. 102, title III, 45 Stat. 1119; Apr. 18, 1930, ch. 184, title III, 46 Stat. 198; Feb. 23, 1931, ch. 280, title III, 46 Stat. 1334; July 1, 1932, ch. 361, title III, 47 Stat. 502; Mar. 1, 1933, ch. 144, title III, 47 Stat. 1393; Apr. 7, 1934, ch. 104, title III, 48 Stat. 551; Mar. 22, 1935, ch. 39, § 1, 49 Stat. 90; May 15, 1936, ch. 405, § 1, 49 Stat. 1336; June 16, 1937, ch. 359, title III, § 1, 50 Stat. 287; Apr. 27, 1938, ch. 180, title III, § 1, 52 Stat. 273; June 29, 1939, ch. 248, title III, 53 Stat. 909, related to purchases of supplies and equipment on the open market, and is now covered by sections 6a and 6b of Title 41, Public Contracts.

CHAPTER 6—WEIGHTS AND MEASURES AND STANDARD TIME

SUBCHAPTER I—WEIGHTS, MEASURES, AND STANDARDS GENERALLY

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206. Standard gauge for sheet and plate iron and steel.
207. Preparation of standards by Secretary of Commerce.
208. Variations.

SUBCHAPTER IV—SCREW THREADS

208a to 212. Repealed.

SUBCHAPTER V—STANDARDS OF ELECTRICITY

221, 222. Repealed.

Sec.
223. Units of electrical measure.
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    Current-ampere.
    Electromotive force and electric potential-volt.
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    Capacitance-farad.
    Inductance-henry.
    Power-watt.
    Energy—joule; kilowatt—hour.
    Intensity of light—candela.
    Flux of light—lumen.
224. Establishment of values of primary electric and photometric units in absolute measure; legal values.

SUBCHAPTER VI—STANDARD BARRELS

231. Standard barrel for apples; steel barrels.
232. Barrels below standard; marking.
233. Penalty for violations.
234. Standard barrel for fruits or other dry commodity.
235. Sale or shipment of barrel of less capacity than standard; punishment.
236. Variations from standard permitted; prosecutions; law not applicable to certain barrels.
237. Standard barrels for lime.
238. Penalty for selling in barrels not marked.
239. Sale in containers of less capacity than barrel.
240. Rules and regulations.
241. Penalty for selling lime in unmarked barrels and containers.
242. Duty of United States attorney to enforce law.

SUBCHAPTER VII—STANDARD BASKETS AND CONTAINERS

251 to 256. Repealed.

SUBCHAPTER VIII—STANDARD HAMPERS, ROUND STAVE BASKETS, AND SPLINT BASKETS FOR FRUITS AND VEGETABLES

257 to 257i. Repealed.

SUBCHAPTER IX—STANDARD TIME

260. Congressional declaration of policy; adoption and observance of uniform standard of time; authority of Secretary of Transportation.
260a. Advancement of time or changeover dates.
    (a) Duration of period; State exemption.
    (b) State laws superseded.
    (c) Violations; enforcement.
261. Zones for standard time; interstate or foreign commerce.
262. Duty to observe standard time of zones.
263. Designation of zone standard times.
264. Part of Idaho in third zone.
265. Transfer of certain territory to standard central-time zone.
266. Applicability of administrative procedure provisions.
267. State defined.

SUBCHAPTER I—WEIGHTS, MEASURES, AND STANDARDS GENERALLY

§ 201. Sets of standard weights and measures for agricultural colleges

The Secretary of Commerce is directed to cause a complete set of all the weights and measures adopted as standards to be delivered to the governor of each State in the Union for the use of agricultural colleges in the States, respectively, which have received a grant of lands from the United States, and also one set of the same for the use of the Smithsonian Institution: *Provided,* That the cost of each set shall not exceed $200.

(Mar. 3, 1881, No. 26, 21 Stat. 521; Feb. 14, 1903, ch. 552, §§ 4, 10, 32 Stat. 826, 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

CHANGE OF NAME

Act Mar. 4, 1913, created the "Department of Labor", and renamed the "Department of Commerce and Labor", the "Department of Commerce".

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred the National Bureau of Standards from the Treasury Department to the Department of Commerce and Labor.

APPROPRIATION

A sum sufficient to carry out the provisions of this section was appropriated out of any money in the Treasury not otherwise appropriated by act Mar. 3, 1881.

DISTRIBUTION TO STATES

The Secretary of the Treasury was directed to cause a complete set of all the weights and measures adopted as standards to be delivered to the governor of each state for the use of the states by Res. June 14, 1836, No. 7, 5 Stat. 133, which provision was not incorporated into the Revised Statutes.

§ 202. Repairs to standards

Such necessary repairs and adjustments shall be made to the standards furnished to the several States and Territories as may be requested by the governors thereof, and also to standard weights and measures that have been or may be supplied to United States customhouses and other offices of the United States under Act of Congress, when requested by the Secretary of Commerce.

(July 11, 1890, ch. 667, § 1, 26 Stat. 242; Feb. 14, 1903, ch. 552, §§ 4, 10, 32 Stat. 826, 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

CHANGE OF NAME

Act Mar. 4, 1913, created the "Department of Labor", and renamed the "Department of Commerce and Labor" the "Department of Commerce".

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred the National Bureau of Standards from the Treasury Department to the Department of Commerce and Labor.

§ 203. Replacing lost standard weights and measures; cost

The Secretary of Commerce is authorized and directed to furnish precise copies of standard weights and measures, bearing the seal of the Bureau of Standards and accompanied by a suitable certificate, to any State, Territory, or institution heretofore furnished with the same, upon application in writing by the governor in the case of a State or Territory, or by the official head in the case of an institution, setting forth that the copies of standards applied for are to replace similar ones heretofore furnished, in accordance with law, which have been lost or destroyed: *Provided,* That the applicant shall, before the said standards are delivered, first deposit with the Secretary of Commerce the amount of money necessary to defray all expenses incurred by the Bureau of Standards in furnishing the same, which amount shall be covered into the Treasury of the United States to the credit of miscellaneous receipts as soon as the weights or measures are delivered for transportation into the hands of such persons as are designated by the officers ordering the same.

(Aug. 18, 1894, ch. 301, § 1, 28 Stat. 383; Mar. 3, 1901, ch. 872, § 1, 31 Stat. 1449; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

CHANGE OF NAME

Act Mar. 4, 1913, created the "Department of Labor", and renamed the "Department of Commerce and Labor", the "Department of Commerce".

Act Mar. 3, 1901, provided that the Office of Standard Weights and Measures should thereafter be known as the National Bureau of Standards.

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred the National Bureau of Standards from the Treasury Department to the Department of Commerce and Labor.

§ 204. Metric system authorized

It shall be lawful throughout the United States of America to employ the weights and measures of the metric system; and no contract or dealing, or pleading in any court, shall be deemed invalid or liable to objection because the weights or measures expressed or referred to therein are weights or measures of the metric system.

(R.S. § 3569.)

PRIOR PROVISIONS

R.S. § 3569 derived from act July 28, 1866, ch. 301, § 1, 14 Stat. 339.

STUDY OF METRIC SYSTEM BY THE SECRETARY OF COMMERCE

Pub. L. 90-472, Aug. 9, 1968, 82 Stat. 693, authorized the Secretary of Commerce to conduct a program of investigation, research, and survey to determine the impact of increasing worldwide use of the metric system on the United States; to appraise the desirability and practicability of increasing the use of metric weights and measures in the United States; to study the feasibility of retaining and promoting by international use of dimensional and other engineering standards based on the customary measurement units of the United States; and to evaluate the costs and benefits of alternative courses of action which might be feasible for the United States. The Secretary was directed to submit to the Congress such interim reports as he deemed desirable, and within three years after Aug. 9, 1968, a full and complete report of the findings made under the study, together with such recommendations as he considered to be appropriate and in the best interests of the United States. By its own terms, the Act expired thirty days after the submission of the final report.

CROSS REFERENCES

Education for use of the metric system, see section 1862 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 205a of this title.

§ 205. Authorized tables

The tables in the schedule annexed shall be recognized in the construction of contracts and in all legal proceedings as establishing, in terms of the weights and measures on June 22, 1874, in use in the United States, the equivalents of the weights and measures expressed therein in terms of the metric system; and the tables may lawfully be used for computing, determining, and expressing in customary weights and measures the weights and measures of the metric system.

(R.S. § 3570.)

MEASURES OF LENGTH

Metric denominations and values		*Equivalents in denominations in use*
Myriameter	10,000 meters	6.2137 miles.
Kilometer	1,000 meters	0.62137 mile, or 3,280 feet and 10 inches.
Hectometer	100 meters	328 feet and 1 inch.
Dekameter	10 meters	393.7 inches.
Meter	1 meter	39.37 inches.
Decimeter	1/10 of a meter	3.937 inches
Centimeter	1/100 of a meter	0.3937 inch.
Millimeter	1/1000 of a meter	0.0394 inch.

MEASURES OF CAPACITY

Metric denominations and values			*Equivalents in denominations in use*	
Names	*Number of liters*	*Cubic measure*	*Dry measure*	*Liquor or wine measure*
Kiloliter, or stere	1,000	1 cubic meter	1.308 cubic yards.	264.17 gallons.
Hectoliter	100	1/10 of a cubic meter.	2 bushels and 3.35 pecks.	26.417 gallons.
Dekaliter	10	10 cubic decimeters.	9.08 quarts	2.6417 gallons.
Liter	1	1 cubic decimeter.	0.908 quart	1.0567 quarts.
Deciliter	1/10	1/10 of a cubic decimeter.	6.1022 cubic inches.	0.845 gill.
Centiliter	1/100	10 cubic centimeters.	0.6102 cubic inch.	0.338 fluid ounce.
Milliliter	1/1000	1 cubic centimeter.	0.061 cubic inch.	0.27 fluid dram.

MEASURES OF SURFACE

Metric denominations and values		*Equivalents in denominations in use*
Hectare	10,000 square meters	2.471 acres.
Are	100 square meters	119.6 square yards.
Centare	1 square meter	1,550 square inches

WEIGHTS

Metric denominations and values			
Names	*Number of grams*	*Weight of what quantity of water at maximum density*	*Equivalents in denominations in use (avoirdupois weight)*
Millier or tonneau.	1,000,000	1 cubic meter	2,204.6 pounds
Quintal	100,000	1 hectoliter	220.46 pounds.
Myriagram.	10,000	10 liters	22.046 pounds.

Metric denominations and values

Names	*Number of grams*	*Weight of what quantity of water at maximum density*	*Equivalents in denominations in use (avoirdupois weight)*
Kilogram or kilo.	1,000	1 liter	2.2046 pounds.
Hectogram.	100	1 deciliter	3.5274 ounces.
Dekagram..	10	10 cubic centimeters.	0.3527 ounce.
Gram	1	1 cubic centimeter.	15.432 grains.
Decigram ...	1/10	1/10 of a cubic centimeter.	1.5432 grains.
Centigram..	1/100	10 cubic millimeters.	0.1543 grain.
Milligram...	1/1000	1 cubic millimeter	0.0154 grain

Prior Provisions

R.S. § 3570 was derived from act July 28, 1866, ch. 301, § 2, 14 Stat. 339, 340.

SUBCHAPTER II—METRIC CONVERSION

§ 205a. Congressional statement of findings

The Congress finds as follows:

(1) The United States was an original signatory party to the 1875 Treaty of the Meter (20 Stat. 709), which established the General Conference of Weights and Measures, the International Committee of Weights and Measures and the International Bureau of Weights and Measures.

(2) Although the use of metric measurement standards in the United States has been authorized by law since 1866 (Act of July 28, 1866; 14 Stat. 339), this Nation today is the only industrially developed nation which has not established a national policy of committing itself and taking steps to facilitate conversion to the metric system.

(Pub. L. 94-168, § 2, Dec. 23, 1975, 89 Stat. 1007.)

References in Text

Act of July 28, 1866; 14 Stat. 339, referred to in par. (2), is predecessor of R.S. § 3569 authorizing use of the metric system, which is classified to section 204 of this title.

Short Title

Section 1 of Pub. L. 94-168, Dec. 23, 1975, 89 Stat. 1007, provided: "That this Act [which enacted this subchapter] may be cited as the 'Metric Conversion Act of 1975'."

§ 205b. Declaration of policy

It is therefore declared that the policy of the United States shall be to coordinate and plan the increasing use of the metric system in the United States and to establish a United States Metric Board to coordinate the voluntary conversion to the metric system.

(Pub. L. 94-168, § 3, Dec. 23, 1975, 89 Stat. 1007.)

§ 205c. Definitions

As used in this subchapter, the term—

(1) "Board" means the United States Metric Board, established under section 205d of this title;

(2) "engineering standard" means a standard which prescribes (A) a concise set of conditions and requirements that must be satisfied by a material, product, process, procedure, convention, or test method; and (B) the physical, functional, performance and/or conformance characteristics thereof;

(3) "international standard or recommendation" means an engineering standard or recommendation which is (A) formulated and promulgated by an international organization and (B) recommended for adoption by individual nations as a national standard; and

(4) "metric system of measurement" means the International System of Units as established by the General Conference of Weights and Measures in 1960 and as interpreted or modified for the United States by the Secretary of Commerce.

(Pub. L. 94-168, § 4, Dec. 23, 1975, 89 Stat. 1007.)

§ 205d. United States Metric Board

(a) Establishment

There is established, in accordance with this section, an independent instrumentality to be known as a United States Metric Board.

(b) Membership; Chairman; appointment of members; term of office; vacancies

The Board shall consist of 17 individuals, as follows:

(1) the Chairman, a qualified individual who shall be appointed by the President, by and with the advice and consent of the Senate;

(2) sixteen members who shall be appointed by the President, by and with the advice and consent of the Senate, on the following basis—

(A) one to be selected from lists of qualified individuals recommended by engineers and organizations representative of engineering interests;

(B) one to be selected from lists of qualified individuals recommended by scientists, the scientific and technical community, and organizations representative of scientists and technicians;

(C) one to be selected from a list of qualified individuals recommended by the National Association of Manufacturers or its successor;

(D) one to be selected from lists of qualified individuals recommended by the United States Chamber of Commerce, or its successor, retailers, and other commercial organizations;

(E) two to be selected from lists of qualified individuals recommended by the American Federation of Labor and Congress of Industrial Organizations or its successor, who are representative of workers directly affected by metric conversion, and by other organizations representing labor;

(F) one to be selected from a list of qualified individuals recommended by the National Governors Conference, the National Council of State Legislatures, and organizations representative of State and local government;

(G) two to be selected from lists of qualified individuals recommended by organizations representative of small business;

(H) one to be selected from lists of qualified individuals representative of the construction industry;

(I) one to be selected from a list of qualified individuals recommended by the National Conference on Weights and Measures and standards making organizations;

(J) one to be selected from lists of qualified individuals recommended by educators, the educational community, and organizations representative of educational interests; and

(K) four at-large members to represent consumers and other interests deemed suitable by the President and who shall be qualified individuals.

As used in this subsection, each "list" shall include the names of at least three individuals for each applicable vacancy. The terms of office of the members of the Board first taking office shall expire as designated by the President at the time of nomination; five at the end of the 2d year; five at the end of the 4th year; and six at the end of the 6th year. The term of office of the Chairman of such Board shall be 6 years. Members, including the Chairman, may be appointed to an additional term of 6 years, in the same manner as the original appointment. Successors to members of such Board shall be appointed in the same manner as the original members and shall have terms of office expiring 6 years from the date of expiration of the terms for which their predecessors were appointed. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term. Beginning 45 days after the date of incorporation of the Board, six members of such Board shall constitute a quorum for the transaction of any function of the Board.

(c) Compulsory powers

Unless otherwise provided by the Congress, the Board shall have no compulsory powers.

(d) Termination

The Board shall cease to exist when the Congress, by law, determines that its mission has been accomplished.

(Pub. L. 94-168, § 5, Dec. 23, 1975, 89 Stat. 1007)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 205c, 205g of this title.

§ 205e. Functions and powers of Board

It shall be the function of the Board to devise and carry out a broad program of planning, coordination, and public education, consistent with other national policy and interests, with the aim of implementing the policy set forth in this subchapter. In carrying out this program, the Board shall—

(1) consult with and take into account the interests, views, and conversion costs of United States commerce and industry, including small business; science; engineering; labor; education; consumers; government agencies at the Federal, State, and local level; nationally recognized standards developing and coordinating organizations; metric conversion planning and coordinating groups; and such other individuals or groups as are considered appropriate by the Board to the carrying out of the purposes of this subchapter. The Board shall take into account activities underway in the private and public sectors, so as not to duplicate unnecessarily such activities;

(2) provide for appropriate procedures whereby various groups, under the auspices of the Board, may formulate, and recommend or suggest, to the Board specific programs for coordinating conversion in each industry and segment thereof and specific dimensions and configurations in the metric system and in other measurements for general use. Such programs, dimensions, and configurations shall be consistent with (A) the needs, interests, and capabilities of manufacturers (large and small), suppliers, labor, consumers, educators, and other interested groups, and (B) the national interest;

(3) publicize, in an appropriate manner, proposed programs and provide an opportunity for interested groups or individuals to submit comments on such programs. At the request of interested parties, the Board, in its discretion, may hold hearings with regard to such programs. Such comments and hearings may be considered by the Board;

(4) encourage activities of standardization organizations to develop or revise, as rapidly as practicable, engineering standards on a metric measurement basis, and to take advantage of opportunities to promote (A) rationalization or simplification of relationships, (B) improvements of design, (C) reduction of size variations, (D) increases in economy, and (E) where feasible, the efficient use of energy and the conservation of natural resources;

(5) encourage the retention, in new metric language standards, of those United States engineering designs, practices, and conventions that are internationally accepted or that embody superior technology;

(6) consult and cooperate with foreign governments, and intergovernmental organizations, in collaboration with the Department of State, and, through appropriate member bodies, with private international organizations, which are or become concerned with the encouragement and coordination of increased use of metric measurement units or engineering standards based on such units, or both. Such consultation shall include efforts, where appropriate, to gain international recognition for metric standards proposed by the United States, and, during the United States conversion, to encourage retention of equivalent customary units, usually by way of dual dimensions, in international standards or recommendations;

(7) assist the public through information and education programs, to become familiar with the meaning and applicability of metric terms and measures in daily life. Such programs shall include—

(A) public information programs conducted by the Board, through the use of newspapers, magazines, radio, television, and other media, and through talks before appropriate citizens' groups, and trade and public organizations;

(B) counseling and consultation by the Secretary of Health, Education, and Welfare; the Secretary of Labor; the Administrator of the Small Business Administration; and the Director of the National Science Foundation, with educational associations, State and local educational agencies, labor education committees, apprentice training committees, and other interested groups, in order to assure (i) that the metric system of measurement is included in the curriculum of the Nation's educational institutions, and (ii) that teachers and other appropriate personnel are properly trained to teach the metric system of measurement;

(C) consultation by the Secretary of Commerce with the National Conference of Weights and Measures in order to assure that State and local weights and measures officials are (i) appropriately involved in metric conversion activities and (ii) assisted in their efforts to bring about timely amendments to weights and measures laws; and

(D) such other public information activities, by any Federal agency in support of this subchapter, as relate to the mission of such agency;

(8) collect, analyze, and publish information about the extent of usage of metric measurements; evaluate the costs and benefits of metric usage; and make efforts to minimize any adverse effects resulting from increasing metric usage;

(9) conduct research, including appropriate surveys; publish the results of such research; and recommend to the Congress and to the President such action as may be appropriate to deal with any unresolved problems, issues, and questions associated with metric conversion, or usage, such problems, issues, and questions may include, but are not limited to, the impact on workers (such as costs of tools and training) and on different occupations and industries, possible increased costs to consumers, the impact on society and the economy, effects on small business, the impact on the international trade position of the United States, the appropriateness of and methods for using procurement by the Federal Government as a means to effect conversion to the metric system, the proper conversion or transition period in particular sectors of society, and consequences for national defense;

(10) submit annually to the Congress and to the President a report on its activities. Each such report shall include a status report on the conversion process as well as projections for the conversion process. Such report may include recommendations covering any legislation or executive action needed to implement the the[1] programs of conversion accepted by the Board. The Board may also submit such other reports and recommendations as it deems necessary; and

(11) submit to the Congress and to the President, not later than 1 year after the date of enactment of the Act making appropriations for carrying out this subchapter, a report on the need to provide an effective structural mechanism for converting customary units to metric units in statutes, regulations, and other laws at all levels of government, on a coordinated and timely basis, in response to voluntary conversion programs adopted and implemented by various sectors of society under the auspices and with the approval of the Board. If the Board determines that such a need exists, such report shall include recommendations as to appropriate and effective means for establishing and implementing such a mechanism.

(Pub. L. 94-168, § 6, Dec. 23, 1975, 89 Stat. 1008.)

§ 205f. Duties of Board

In carrying out its duties under this subchapter, the Board may—

(1) establish an Executive Committee, and such other committees as it deems desirable;

(2) establish such committees and advisory panels as it deems necessary to work with the various sectors of the Nation's economy and with Federal and State governmental agencies in the development and implementation of detailed conversion plans for those sectors. The Board may reimburse, to the extent authorized by law, the members of such committees;

(3) conduct hearings at such times and places as it deems appropriate;

(4) enter into contracts, in accordance with the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties;

(5) delegate to the Executive Director such authority as it deems advisable; and

(6) perform such other acts as may be necessary to carry out the duties prescribed by this subchapter.

(Pub. L. 94-168, § 7, Dec. 23, 1975, 89 Stat. 1011.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in par. (4), is act June 30, 1949, ch. 288, 63 Stat. 377. Provisions of that act relating to management and disposal of government property are classified to chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property, and Works. Provisions of that act relating to contracts are classified to chapter 4 (§ 251 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note under section 471 of Title 40, and Tables volume.

§ 205g. Gifts, donations and bequests to Board

(a) Authorization; deposit into Treasury and disbursement

The Board may accept, hold, administer, and utilize gifts, donations, and bequests of property, both real and personal, and personal services, for the purpose of aiding or facilitating the work of the Board. Gifts and bequests of money, and the proceeds from the sale of any other property received as gifts or requests, shall be deposited in the Treasury in a separate fund and shall be disbursed upon order of the Board.

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[1] So in original.

(b) Federal income, estate, and gift taxation of property

For purpose of Federal income, estate, and gift taxation, property accepted under subsection (a) of this section shall be considered as a gift or bequest to or for the use of the United States.

(c) Investment of moneys; disbursement of accrued income

Upon the request of the Board, the Secretary of the Treasury may invest and reinvest, in securities of the United States, any moneys contained in the fund authorized in subsection (a) of this section. Income accruing from such securities, and from any other property accepted to the credit of such fund, shall be dispersed upon the order of the Board.

(d) Reversion to Treasury of unexpended funds

Funds not expended by the Board as of the date when it ceases to exist, in accordance with section 205d(d) of this title, shall revert to the Treasury of the United States as of such date.

(Pub. L. 94-168, § 8, Dec. 23, 1975, 89 Stat. 1011.)

§ 205h. Compensation of Board members; travel expenses

Members of the Board who are not in the regular full-time employ of the United States shall, while attending meetings or conferences of the Board or while otherwise engaged in the business of the Board, be entitled to receive compensation at a rate not to exceed the daily rate currently being paid grade 18 of the General Schedule (under section 5332 of title 5), including traveltime. While so serving, on the business of the Board away from their homes or regular places of business, members of the Board may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, for persons employed intermittently in the Government service. Payments under this section shall not render members of the Board employees or officials of the United States for any purpose. Members of the Board who are in the employ of the United States shall be entitled to travel expenses when traveling on the business of the Board.

(Pub. L. 94-168, § 9, Dec. 23, 1975, 89 Stat. 1011.)

§ 205i. Personnel

(a) Executive Director; appointment; tenure; duties

The Board shall appoint a qualified individual to serve as the Executive Director of the Board at the pleasure of the Board. The Executive Director, subject to the direction of the Board, shall be responsible to the Board and shall carry out the metric conversion program, pursuant to the provisions of this subchapter and the policies established by the Board.

(b) Executive Director; salary

The Executive Director of the Board shall serve full time and be subject to the provisions of chapter 51 and subchapter III of chapter 53 of title 5. The annual salary of the Executive Director shall not exceed level III of the Executive Schedule under section 5314 of such title.

(c) Staff personnel; appointment and compensation

The Board may appoint and fix the compensation of such staff personnel as may be necessary to carry out the provisions of this subchapter in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5.

(d) Experts and consultants; employment and compensation; annual review of contracts

The Board may (1) employ experts and consultants or organizations thereof, as authorized by section 3109 of title 5; (2) compensate individuals so employed at rates not in excess of the rate currently being paid grade 18 of the General Schedule under section 5332 of such title, including traveltime; and (3) may allow such individuals, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of such title 5 for persons in the Government service employed intermittently: *Provided, however,* That contracts for such temporary employment may be renewed annually.

(Pub. L. 94-168, § 10, Dec. 23, 1975, 89 Stat. 1012.)

§ 205j. Financial and administrative services; source and reimbursement

Financial and administrative services, including those related to budgeting, accounting, financial reporting, personnel, and procurement, and such other staff services as may be needed by the Board, may be obtained by the Board from the Secretary of Commerce or other appropriate sources in the Federal Government. Payment for such services shall be made by the Board, in advance or by reimbursement, from funds of the Board in such amounts as may be agreed upon by the Chairman of the Board and by the source of the services being rendered.

(Pub. L. 94-168, § 11, Dec. 23, 1975, 89 Stat. 1012.)

§ 205k. Authorization of appropriations; availability

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subchapter. Appropriations to carry out the provisions of this subchapter may remain available for obligation and expenditure for such period or periods as may be specified in the Acts making such appropriations.

(Pub. L. 94-168, § 12, Dec. 23, 1975, 89 Stat. 1012.)

SUBCHAPTER III—STANDARD GAUGE FOR IRON AND STEEL

§ 206. Standard gauge for sheet and plate iron and steel

For the purpose of securing uniformity the following is established as the only standard gauge for sheet and plate iron and steel in the United States of America, namely:

Number of gauge	Approximate thickness in fractions of an inch	Approximate thickness in decimal parts of an inch	Approximate thickness in millimeters	Weight per square foot in ounces avoirdupois	Weight per square foot in pounds avoirdupois	Weight per square foot in kilograms	Weight per square meter in kilograms	Weight per square meter in pounds avoirdupois
0000000	1/2	.5	12.7	320	20.00	9.072	97.65	215.28
000000	15/32	.46875	11.90625	300	18.75	8.505	91.55	201.82
00000	7/16	.4375	11.1125	280	17.50	7.983	85.44	188.37
0000	13/32	.40625	10.31875	260	16.25	7.371	79.33	174.91
000	3/8	.375	9.525	240	15	6.804	73.24	161.46
00	11/32	.34375	8.73125	220	13.75	6.237	67.13	148.00
0	5/16	.3125	7.9375	200	12.50	5.67	61.03	134.55
1	9/32	.28125	7.14375	180	11.25	5.103	54.93	121.09
2	17/64	.265625	6.746875	170	10.625	4.819	51.88	114.37
3	1/4	.25	6.35	160	10	4.536	48.82	107.64
4	15/64	.234375	5.953125	150	9.375	4.252	45.77	100.91
5	7/32	.21875	5.55625	140	8.75	3.969	42.72	94.18
6	13/64	.203125	5.159375	130	8.125	3.685	39.67	87.45
7	3/16	.1875	4.7625	120	7.5	3.402	36.62	80.72
8	11/64	.171875	4.365625	110	6.875	3.118	33.57	74.00
9	5/32	.15625	3.96875	100	6.25	2.835	30.52	67.27
10	9/64	.140625	3.571875	90	5.625	2.552	27.46	60.55
11	1/8	.125	3.175	80	5	2.268	24.41	53.82
12	7/64	.109375	2.778125	70	4.375	1.984	21.36	47.09
13	3/32	.09375	2.38125	60	3.75	1.701	18.31	40.36
14	5/64	.078125	1.984375	50	3.125	1.417	15.26	33.64
15	9/128	.0703125	1.7859375	45	2.8125	1.276	13.73	30.27
16	1/16	.0625	1.5875	40	2.5	1.134	12.21	26.91
17	9/160	.05625	1.42875	36	2.25	1.021	10.99	24.22
18	1/20	.05	1.27	32	2	.9072	9.765	21.53
19	7/160	.04375	1.11125	28	1.75	.7938	8.544	18.84
20	3/80	.0375	.9525	24	1.50	.6804	7.324	16.15
21	11/320	.034375	.873125	22	1.375	.6237	6.713	14.80
22	1/32	.03125	.793750	20	1.25	.567	6.103	13.46
23	9/320	.028125	.714375	18	1.125	.5103	5.493	12.11
24	1/40	.025	.635	16	1	.4536	4.882	10.76
25	7/320	.021875	.555625	14	.875	.3969	4.272	9.42
26	3/160	.01875	.47625	12	.75	.3402	3.662	8.07
27	11/640	.0171875	.4365625	11	.6875	.3119	3.357	7.40
28	1/64	.015625	.396875	10	.625	.2835	3.052	6.73
29	9/640	.0140625	.3571875	9	.5625	.2551	2.746	6.05
30	1/80	.0125	.3175	8	.5	.2268	2.441	5.38
31	7/640	.0109375	.2778125	7	.4375	.1984	2.136	4.71
32	13/1280	:01015625	.25796875	6½	.40625	.1843	1.983	4.37
33	3/320	.009375	.238125	6	.375	.1701	1.831	4.04
34	11/1280	.00859375	.21828125	5½	.34375	.1559	1.678	3.70
35	5/640	.0078125	.1984375	5	.3125	.1417	1.526	3.36
36	9/1280	.00703125	.17859375	4½	.28125	.1276	1.373	3.03
37	17/2560	.006640625	.168671875	4¼	.265625	.1205	1.297	2.87
38	1/160	.00625	.15875	4	.25	.1134	1.221	2.69

The same and no other shall be used in determining duties and taxes levied by the United States of America on sheet and plate iron and steel. But this subchapter shall not be construed to increase duties upon any articles which may be imported.

(Mar. 3, 1893, ch. 221, § 1, 27 Stat. 746.)

References in Text

This subchapter, referred to in text, in the original read "this act", meaning act Mar. 3, 1893, ch. 221, 27 Stat. 746, which is classified to this section and to sections 207 and 208 of this title.

Section Referred to in Other Sections

This section is referred to in sections 207, 208 of this title.

§ 207. Preparation of standards by Secretary of Commerce

The Secretary of Commerce is authorized and required to prepare suitable standards in accordance with section 206 of this title.

(Mar. 3, 1893, ch. 221, § 2, 27 Stat. 746; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

Change of Name

Act Mar. 4, 1913, created the "Department of Labor", and renamed the "Department of Commerce and Labor" the "Department of Commerce".

Transfer of Functions

Act Feb. 14, 1903, transferred the National Bureau of Standards from the Treasury Department to the Department of Commerce and Labor.

Section Referred to in Other Sections

This section is referred to in section 206 of this title.

§ 208. Variations

In the practical use and application of the standard gauge easblished[1] in section 206 of this title a variation of 2½ percent, either way may be allowed.

(Mar. 3, 1893, ch. 221, § 3, 27 Stat. 746.)

Section Referred to in Other Sections

This section is referred to in section 206 of this title.

SUBCHAPTER IV—SCREW THREADS

§§ 208a to 212. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 644, 646

Sections, acts July 18, 1918, ch. 156, §§ 1-5, 40 Stat. 912, 913; Mar. 3, 1919, ch. 96, 40 Stat. 1291; Apr. 16, 1926, ch. 148, 44 Stat. 297, created the Commission for the Standardization of Screw Threads and provided for the composition of the Commission, its duties, and pay.

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[1] So in original, should be "established".

SUBCHAPTER V—STANDARDS OF ELECTRICITY

§§ 221, 222. Repealed. July 21, 1950, ch. 484, § 13, 64 Stat. 370

Sections, act July 12, 1894, ch. 131, §§ 1, 2, 28 Stat. 101, 102, related to units of electrical measure and are now covered by sections 223 and 224 of this title.

§ 223. Units of electrical measure

From and after July 21, 1950, the legal units of electrical and photometric measurement in the United States of America shall be those defined and established as provided in the following paragraphs.

Resistance-ohm

The unit of electrical resistance shall be the ohm, which is equal to one thousand million units of resistance of the centimeter-gram-second system of electromagnetic units.

Current-ampere

The unit of electric current shall be the ampere, which is one-tenth of the unit of current of the centimeter-gram-second system of electromagnetic units.

Electromotive force and electric potential-volt

The unit of electromotive force and of electric potential shall be the volt, which is the electromotive force that, steadily applied to a conductor whose resistance is one ohm, will produce a current of one ampere.

Quantity-coulomb

The unit of electric quantity shall be the coulomb, which is the quantity of electricity transferred by a current of one ampere in one second.

Capacitance-farad

The unit of electrical capacitance shall be the farad, which is the capacitance of a capacitor that is charged to a potential of one volt by one coulomb of electricity.

Inductance-henry

The unit of electrical inductance shall be the henry, which is the inductance in a circuit such that an electromotive force of one volt is induced in the circuit by variation of an inducing current at the rate of one ampere per second.

Power-watt

The unit of power shall be the watt, which is equal to ten million units of power in the centimeter-gram-second system, and which is the power required to cause an unvarying current of one ampere to flow between points differing in potential by one volt.

Energy—joule; kilowatt—hour

The units of energy shall be (a) the joule, which is equivalent to the energy supplied by a power of one watt operating for one second, and (b) the kilowatt-hour, which is equivalent to the energy supplied by a power of one thousand watts operating for one hour.

Intensity of light—candela

The unit of intensity of light shall be the candela, which is one-sixtieth of the intensity of one square centimeter of a perfect radiator, known as a "black body", when operated at the temperature of freezing platinum.

Flux of light—lumen

The unit of flux of light shall be the lumen, which is the flux in a unit of solid angle from a source of which is the intensity is one candela.

(July 21, 1950, ch. 484, §§ 1-11, 64 Stat. 370; Nov. 4, 1963, Pub. L. 88-165, 77 Stat. 299.)

AMENDMENTS

1963—Pub. L. 88-165 substituted "candela" for "candle" wherever appearing.

§ 224. Establishment of values of primary electric and photometric units in absolute measure; legal values

It shall be the duty of the Secretary of Commerce to establish the values of the primary electric and photometric units in absolute measure, and the legal values for these units shall be those represented by, or derived from, national reference standards maintained by the Department of Commerce.

(July 21, 1950, ch. 484, § 12, 64 Stat. 370.)

SUBCHAPTER VI—STANDARD BARRELS

§ 231. Standard barrel for apples; steel barrels

The standard barrel for apples shall be of the following dimensions when measured without distention of its parts: Length of stave, twenty-eight and one-half inches; diameter of head, seventeen and one-eighth inches; distance between heads, twenty-six inches; circumference of bulge, sixty-four inches outside measurement, representing as nearly as possible seven thousand and fifty-six cubic inches: *Provided*, That steel barrels containing the interior dimensions provided for in this section shall be construed as a compliance therewith.

(Aug. 3, 1912, ch. 273, § 1, 37 Stat. 250.)

CROSS REFERENCES

Standard barrel for fruits or other dry commodity, see section 234 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 232, 233 of this title.

§ 232. Barrels below standard; marking

All barrels packed with apples shall be deemed to be below standard if the barrel bears any statement, design, or device indicating that the barrel is a standard barrel of apples, as defined in section 231 of this title, and the capacity of the barrel is less than the capacity prescribed by said section, unless the barrel shall be plainly marked on end and side with words or figures showing the fractional relation which the actual capacity of the barrel bears to the capacity prescribed by said section. The marking required by this section shall be in block letters of size not less than seventy-two point (one-inch) gothic.

(Aug. 3, 1912, ch. 273, § 4, 37 Stat. 251.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 233 of this title.

§ 233. Penalty for violations

Any person, firm, or corporation, or association who shall knowingly pack or cause to be packed apples in barrels, or who shall knowingly sell or offer for sale such barrels in violation of the provisions of this Act shall be liable to a penalty of $1 and costs for each such barrel so sold or offered for sale, to be recovered at the suit of the United States in any court of the United States having jurisdiction.

(Aug. 3, 1912, ch. 273, § 6, 37 Stat. 251.)

REFERENCES IN TEXT

This Act, referred to in text, is act Aug. 3, 1912, ch. 273, §§ 1 to 6, 37 Stat. 250, 251, which is classified to this section and to sections 231 and 232 of this title and to sections 20 to 23 of Title 21, Food and Drugs.

CODIFICATION

This section is also set out as section 23 of Title 21, Food and Drugs.

§ 234. Standard barrel for fruits or other dry commodity

The standard barrel for fruits, vegetables, and other dry commodities other than cranberries shall be of the following dimensions when measured without distention of its parts: Length of stave, twenty-eight and one-half inches; diameter of heads, seventeen and one-eighth inches; distance between heads, twenty-six inches; circumference of bulge, sixty-four inches, outside measurement; and the thickness of staves not greater than four-tenths of an inch: *Provided*, That any barrel of a different form having a capacity of seven thousand and fifty-six cubic inches shall be a standard barrel. The standard barrel for cranberries shall be of the following dimensions when measured without distention of its parts: Length of staves, twenty-eight and one-half inches; diameter of head, sixteen and one-fourth inches; distance between heads, twenty-five and one-fourth inches; circumference of bulge, fifty-eight and one-half inches, outside measurement; and the thickness of staves not greater than four-tenths of an inch.

(Mar. 4, 1915, ch. 158, § 1, 38 Stat. 1186.)

CROSS REFERENCES

Apples, standard barrel, see section 231 of this title.
Standard barrels for lime, net weight, see section 237 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 235, 236 of this title.

§ 235. Sale or shipment of barrel of less capacity than standard; punishment

It shall be unlawful to sell, offer, or expose for sale in any State, Territory, or the District of Columbia, or to ship from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia or to a foreign country, a barrel containing fruits or vegetables or any other dry commodity of less capacity than the standard barrels defined in section 234 of this title, known as the third, half, and three-quarters barrel, and any person guilty of a willful violation of any of the provisions of sections 234 to 236 of this title shall be deemed guilty of a misdemeanor and be liable to a fine not to exceed $500, or imprisonment not to exceed six months, in the court of the United States having jurisdiction: *Provided, however*, That no barrel shall be deemed below standard within the meaning of said sections when shipped to any foreign country and constructed according to the specifications or directions of the foreign purchaser if not constructed in conflict with the laws of the foreign country to which the same is intended to be shipped.

(Mar. 4, 1915, ch. 158, § 2, 38 Stat. 1186.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 236 of this title.

§ 236. Variations from standard permitted; prosecutions; law not applicable to certain barrels

Reasonable variations shall be permitted and tolerance shall be established by rules and regulations made by the Director of the Bureau of Standards and approved by the Secretary of Commerce. Prosecutions for offenses under this section or sections 234 or 235 of this title may be begun upon complaint of local sealers of weights and measures or other officers of the several States and Territories appointed to enforce the laws of the said States or Territories, respectively, relating to weights and measures: *Provided, however*, That nothing in this section or sections 234 and 235 of this title shall apply to barrels used in packing or shipping commodities sold exclusively by weight or numerical count.

(Mar. 4, 1915, ch. 158, § 3, 38 Stat. 1187.)

TRANSFER OF FUNCTIONS

The functions of all other officers of the Department of Commerce and the functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 235 of this title.

§ 237. Standard barrels for lime

There is established a large and a small barrel of lime, the large barrel to consist of two hundred and eighty pounds and the small barrel to consist of one hundred and eighty pounds, net weight.

(Aug. 23, 1916, ch. 396, § 1, 39 Stat. 530.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 240, 241, 242 of this title.

§ 238. Penalty for selling in barrels not marked

It shall be unlawful for any person to sell or offer for sale lime imported in barrels from a foreign country, or to sell or offer for sale lime in barrels for shipment from any State or Territory or the District of Columbia, to any other State or Territory or the District of Columbia, unless there shall be stenciled or otherwise clearly marked on one or both heads of the small barrel the figures "180 lbs. net" and of the large barrel the figures "280 lbs. net" before the importation or shipment, and on either barrel in addition the name of the manufacturer of the lime and where manufactured, and, if imported, the name of the country from which it is imported.

(Aug. 23, 1916, ch. 396, § 2, 39 Stat. 530.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 240, 241, 242 of this title.

§ 239. Sale in containers of less capacity than barrel

When lime is sold in interstate or foreign commerce in containers of less capacity than the standard small barrel, it shall be sold in fractional parts of said standard small barrel, and the net weight of lime contained in such container shall by stencil or otherwise be clearly marked thereon, together with the name of the manufacturer thereof, and the name of the brand, if any, under which it is sold, and, if imported, the name of the country from which it is imported.

(Aug. 23, 1916, ch. 396, § 3, 39 Stat. 530.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 240, 241, 242 of this title.

§ 240. Rules and regulations

Rules and regulations for the enforcement of sections 237 to 242 of this title, not inconsistent with the provisions of said sections, shall be made by the Director of the Bureau of Standards and approved by the Secretary of Commerce, and such rules and regulations shall include reasonable variations or tolerances which may be allowed.

(Aug. 23, 1916, ch. 396, § 4, 39 Stat. 531.)

TRANSFER OF FUNCTIONS

The functions of all other officers of the Department of Commerce and the functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 241, 242 of this title.

§ 241. Penalty for selling lime in unmarked barrels and containers

It shall be unlawful to pack, sell, or offer for sale for shipment from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, any barrels or other containers of lime which are not marked as provided in sections 238 and 239 of this title, or to sell, charge for, or purport to deliver from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, as a large or small barrel or a fractional part of said small barrel of lime, any less weight of lime than is established by the provisions of sections 237 to 242 of this title and any person guilty of a violation of the provisions of said sections shall be deemed guilty of a misdemeanor and be liable to a fine not exceeding $100.

(Aug. 23, 1916, ch. 396, § 5, 39 Stat. 531.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 240, 242 of this title.

§ 242. Duty of United States attorney to enforce law

It shall be the duty of each United States attorney, to whom satisfactory evidence of any violation of sections 237 to 242 of this title is presented, to cause appropriate proceedings to be commenced and prosecuted in the United States court having jurisdiction of such offense.

(Aug. 23, 1916, ch. 396, § 6, 39 Stat. 531; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorney" for "district attorney". See section 501 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 240, 241 of this title.

SUBCHAPTER VII—STANDARD BASKETS AND CONTAINERS

§§ 251 to 256. Repealed. Pub. L. 90-628, § 1(a), Oct. 22, 1968, 82 Stat. 1320

Section 251, acts Aug. 31, 1916, ch. 426, § 1, 39 Stat. 673; June 11, 1934, ch. 447, § 1, 48 Stat. 930, set the standards for Climax baskets for grapes and other fruits and vegetables and for mushrooms.

Section 252, act Aug. 31, 1916, ch. 426, § 2, 39 Stat. 673, set the standards for the standard basket or container for small fruits and vegetables.

Section 253, acts Aug. 31, 1916, ch. 426, § 3, 39 Stat. 674; June 11, 1934, c. 447, § 2, 48 Stat. 930, set the penalties for failure to conform to standards.

Section 254, act Aug. 31, 1916, ch. 426, § 4, 39 Stat. 674, provided for examinations and tests by the Department of Agriculture and for the promulgation of rules and regulations covering allowable tolerances and variations.

Section 255, acts Aug. 31, 1916, ch. 426, § 5, 39 Stat. 674; June 25, 1948, ch. 646, § 1, 62 Stat. 909, made the United States attorney responsible for commencing actions to enforce penalties.

Section 256, act Aug. 31, 1916, ch. 426, § 6, 39 Stat. 674, covered the guaranty given by manufacturers or sellers of baskets as to the correctness of such containers.

EFFECTIVE DATE OF REPEAL

Section 3 of Pub. L. 90-628 provided that: "This Act [repealing sections 251 to 257 of this title and amending section 1459(b)(3) of this title] shall become effective 60 days after enactment [Oct. 22, 1968]."

SUBCHAPTER VIII—STANDARD HAMPERS, ROUND STAVE BASKETS, AND SPLINT BASKETS FOR FRUITS AND VEGETABLES

§§ 257 to 257i. Repealed. Pub. L. 90-628, § 1(b), Oct. 22, 1968, 82 Stat. 1320

Section 257, acts May 21, 1928, ch. 664, § 1, 45 Stat. 685; June 28, 1954, ch. 406, § 1, 68 Stat. 301; Aug. 30, 1964, Pub. L. 88-516, § 1, 78 Stat. 697, set the dimensions for standard hampers and round stave baskets.

Section 257a, acts May 21, 1928, ch. 664, § 2, 45 Stat. 685; Aug. 30, 1964, Pub. L. 88-516, § 2, 78 Stat. 697, set the dimensions for standard splint baskets.

Section 257b, act May 21, 1928, ch. 664, § 3, 45 Stat. 686, provided for the promulgation of regulations allowing reasonable variations in hampers and baskets.

Section 257c, act May 21, 1928, ch. 664, § 4, 45 Stat. 686, required approval by the Secretary of Agriculture of the manufacturer's dimension specifications for hampers and baskets.

Section 257d, acts May 21, 1928, ch. 664, § 5, 45 Stat. 686; Aug. 30, 1964, Pub. L. 88-516, § 3, 78 Stat. 697, set out penalties for violations and covered the guaranty given by manufacturers and sellers of hampers and baskets as to their correctness.

Section 257e, act May 21, 1928, ch. 664, § 6, 45 Stat. 686, provided for the seizure of illegal hampers and baskets, and the procedure covering their condemnation.

Section 257f, act May 21, 1928, ch. 664, § 7, 45 Stat. 687, allowed manufacture of hampers and baskets for foreign sale in conformity with foreign specifications.

Section 257g, acts May 21, 1928, ch. 664, § 8, 45 Stat. 687; June 25, 1948, ch. 646, § 1, 62 Stat. 909, placed upon the United States Attorney the duty to prosecute for violations of sections 257 to 257i of this title.

Section 257h, act May 21, 1928, ch. 664, § 9, 45 Stat. 687, provided for the promulgation of regulations covering examinations and tests by the Secretary of Agriculture.

Section 257i, act May 21, 1968, ch. 664, § 10, 45 Stat. 687, authorized the Secretary of Agriculture to cooperate with other agencies in carrying out sections 257 to 257i of this title.

EFFECTIVE DATE OF REPEAL

Repeal of sections 257 to 257i of this title effective 60 days after Oct. 22, 1968, see section 3 of Pub. L. 90-628, set out as a note under section 251 of this title.

SUBCHAPTER IX—STANDARD TIME

§ 260. Congressional declaration of policy; adoption and observance of uniform standard of time; authority of Secretary of Transportation

It is the policy of the United States to promote the adoption and observance of uniform time within the standard time zones prescribed by sections 261 to 264 of this title, as modified by section 265 of this title. To this end the Secretary of Transportation is authorized and directed to foster and promote widespread and uniform adoption and observance of the same standard of time within and throughout each such standard time zone.

(Pub. L. 89-387, § 2, Apr. 13, 1966, 80 Stat. 107; Pub. L. 89-670, §§ 3(a), 6(e)(5)(C), Oct. 15, 1966, 80 Stat. 931, 939.)

EFFECTIVE DATE

Section 6 of Pub. L. 89-387 provided that: "This Act [which enacted sections 260, 260a, 266, and 267 of this title and amended sections 261 to 263 of this title] shall take effect on April 1, 1967; except that if any State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States, or any political subdivision thereof, observes daylight saving time in the year 1966, such time shall advance the standard time otherwise applicable in such place by one hour and shall commence at 2 o'clock antemeridian on the last Sunday in April of the year 1966 and shall end at 2 o'clock antemeridian on the last Sunday in October of the year 1966."

SHORT TITLE

Section 1 of Pub. L. 89-387 Apr. 13, 1966, 80 Stat. 107, provided: "That this Act [which enacted sections 260, 260a, 266, and 267 of this title, and amended sections 261 to 263 of this title, and enacted provisions set out as notes under this section] may be cited as the 'Uniform Time Act of 1966'."

TRANSFER OF FUNCTIONS

Reference to the Interstate Commerce Commission was changed to the Secretary of Transportation pursuant to Pub. L. 89-670, §§ 3(a), 6(e)(5)(C), Oct. 15, 1966, 80 Stat. 931, 939, which created the Department of Transportation and vested all powers, duties and functions of the Interstate Commerce Commission and of the Chairman, members, offices, and officers thereof relating generally to standard time zones and daylight savings time under this section in the Secretary of Transportation. See section 1655(e)(5) of Title 49, Transportation.

ACT REFERRED TO IN OTHER SECTIONS

The Uniform Time Act of 1966 is referred to in title 49 section 1655.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 266, 267 of this title.

§ 260a. Advancement of time or changeover dates

(a) Duration of period; State exemption

During the period commencing at 2 o'clock antemeridian on the last Sunday of April of each year and ending at 2 o'clock antemeridian on the last Sunday of October of each year, the standard time of each zone established by sections 261 to 264 of this title, as modified by section 265 of this title, shall be advanced one hour and such time as so advanced shall for the purposes of such sections 261 to 264, as so modified, be the standard time of such zone during such period; however, (1) any State that lies entirely within one time zone may by law exempt itself from the provisions of this subsection providing for the advancement of time, but only if that law provides that the entire State (including all political subdivisions thereof) shall observe the standard time otherwise applicable during that period, and (2) any State with parts thereof in more than one time zone may by law exempt either the entire State as provided in (1) or may exempt the entire area of the State lying within any time zone.

(b) State laws superseded

It is hereby declared that it is the express intent of Congress by this section to supersede any and all laws of the States or political subdivisions thereof insofar as they may now or hereafter provide for advances in time or changeover dates different from those specified in this section.

(c) Violations; enforcement

For any violation of the provisions of this section the Secretary of Transportation or his duly authorized agent may apply to the district court of the United States for the district in which such violation occurs for the enforcement of this section; and such court shall have jurisdiction to enforce obedience thereto by writ of injunction or by other process, mandatory or otherwise, restraining against further violations of this section and enjoining obedience thereto.

(Pub. L. 89-387, § 3, Apr. 13, 1966, 80 Stat. 107; Pub. L. 89-670, §§ 3(a), 6(e)(5)(C), Oct. 15, 1966, 80 Stat. 931, 939; Pub. L. 92-267, Mar. 30, 1972, 86 Stat. 116.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92-267 authorized any State with parts thereof lying in more than one time zone to exempt by law that part of such State lying within any time zone from the provisions of this subsection providing for the advancement of time.

TRANSFER OF FUNCTIONS

Secretary of Transportation substituted for Interstate Commerce Commission, see Transfer of Functions note set out under section 260 of this title.

EMERGENCY DAYLIGHT SAVING TIME ENERGY CONSERVATION

Pub. L. 93-182, Dec. 15, 1973, 87 Stat. 707, as amended by Pub. L. 93-434, Oct. 5, 1974, 88 Stat. 1209, enacted the Emergency Daylight Saving Time Energy Conservation Act of 1973, which extended daylight saving time. The act was effective at 2 a.m. on the fourth Sunday which occurred after Dec. 15, 1973 and terminated at 2 a.m. on the last Sunday of April 1975.

EX. ORD. NO. 11751. EXEMPTIONS FROM DAYLIGHT SAVING TIME AND REALIGNMENTS OF TIME ZONE LIMITS

Ex. Ord. No. 11751, Dec. 15, 1973, 38 F.R. 34725, provided:

By virtue of the authority vested in me by section 3(b) of the Emergency Daylight Savings Time Energy Conservation Act of 1973 (Public Law 93-182) (hereinafter "the Act") [set out as a note above], section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. The Secretary of Transportation (hereinafter "the Secretary") is hereby designated and empowered to exercise the authority vested in me by section 3(b) of the Act [set out as a note above] to grant an exemption from section 3(a) of the Act (which establishes daylight saving time as standard time) [set out as a note above], or a realignment of a time zone limit, pursuant to a proclamation of a Governor of a State finding that the exemption or realignment is necessary to avoid undue hardship or to conserve fuel in the State or a part thereof.

SEC. 2. In deciding to grant or deny an exemption or realignment, the Secretary shall consider, among other things, the policy of the United States, as expressed in sections 2 and 4 of the Uniform Time Act of 1966 (80 Stat. 107, 108; 15 U.S.C. 260, 261), to promote the adoption and observance of uniform time within the standard time zones of the United States and the convenience of commerce, as well as possible energy savings, undue hardship to large segments of the population, and the possible impact on the success of and cooperation with the national energy conservation program.

SEC. 3. In carrying out his responsibilities under this order, the Secretary shall, as he deems necessary, consult with the Department of Health, Education, and Welfare, the Federal Energy Office (or any agency which hereafter may succeed to its functions), and any other interested agency and he may call upon those agencies for information and advice. Each interested department or agency shall assist the Secretary, as necessary, to carry out the provisions of this order.

RICHARD NIXON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 261 of this title.

§ 261. Zones for standard time; interstate or foreign commerce

For the purpose of establishing the standard time of the United States, the territory of the United States shall be divided into eight zones in the manner provided in this section. Except as provided in section 260a(a) of this title, the standard time of the first zone shall be based on the mean solar time of the sixtieth degree of longitude west from Greenwich; that of the second zone on the seventy-fifth degree; that of the third zone on the ninetieth degree; that of the fourth zone on the one hundred and fifth degree; that of the fifth zone on the one hundred and twentieth degree; that of the sixth zone on the one hundred and thirty-fifth degree; that of the seventh zone on the one hundred and fiftieth degree; and that of the eighth zone on the one hundred and sixty-fifth degree. The limits of each zone shall be defined by an order of the Secretary of Transportation, having regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce, and any such order may be modified from time to time. As used in sections 261 to 264 of this title, the term "interstate or foreign commerce" means commerce between a State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States and any place outside thereof.

(Mar. 19, 1918, ch. 24, § 1, 40 Stat. 450; Apr. 13, 1966, Pub. L. 89-387, § 4(a), 80 Stat. 108; Oct. 15, 1966, Pub. L. 89-670, §§ 3(a), 6(e)(5)(C), 80 Stat. 931, 939.)

AMENDMENTS

1966—Pub. L. 89-387 increased the number of time zones from five for the territory of continental United States to eight for the territory of the United States, inserted the "exception phrase", substituted "solar" for "astronomical" time, established the first zone on basis of the 60th degree of longitude west from Greenwich, redesignated as the second through the fifth zones based on the 75th, 90th, 105th, and 120th degrees former zones one through four based on such degrees, established the sixth zone based on the 135th degree, redesignated as the seventh zone based on the 150th degree former fifth zone based on such degree, and established the eighth zone based on the 165th degree, substituted "interstate or foreign commerce" for "commerce between the several States and and with foreign nations" and defined "interstate or foreign commerce".

REPEALS

Section 5 of act Mar. 19, 1918, repealed all conflicting acts and parts of acts.

TRANSFER OF FUNCTIONS

Secretary of Transportation substituted for Interstate Commerce Commission, see Transfer of Functions note set out under section 260 of this title.

DISTRICT OF COLUMBIA

Act Mar. 31, 1949, ch. 43, 63 Stat. 29, authorized the Board of Commissioners [now the Council of the District of Columbia] to establish daylight-saving time in the District of Columbia.

RETURN TO STANDARD TIME

Act Sept. 25, 1945, ch. 388, 59 Stat. 537, provided, that, notwithstanding the provisions of act Jan. 20, 1942, ch. 7, 56 Stat. 9, which provided for war time, the standard time for each zone as provided for in sections 261 to 264 of this title should again become effective as of Sept. 30, 1945, at 2:00 A.M.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 260, 260a, 262, 266, 267 of this title; title 49 section 1655.

§ 262. Duty to observe standard time of zones

Within the respective zones created under the authority of sections 261 to 264 of this title the standard time of the zone shall insofar as practicable (as determined by the Secretary of Transportation) govern the movement of all common carriers engaged in interstate or foreign commerce. In all statutes, orders, rules, and regulations relating to the time of performance of any act by any officer or department of the United States, whether in the legislative, executive, or judicial branches of the Government, or relating to the time within which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of the United States, it shall be understood and intended that the time shall insofar as practicable (as determined by the Secretary of Transportation) be the United States standard time of the zone within which the act is to be performed.

(Mar. 19, 1918, ch. 24, § 2, 40 Stat. 451; Apr. 13, 1966, Pub. L. 89-387, § 4(b), 80 Stat. 108; Oct. 15, 1966, Pub. L. 89-670, §§ 3(a), 6(e)(5)(C), 80 Stat. 931, 939.)

AMENDMENTS

1966—Pub. L. 89-387 inserted "insofar as practicable (as determined by the Interstate Commerce Commission)" in two instances and substituted "engaged in interstate or foreign commerce" for "engaged in commerce between the several States or between a State and any one of the Territories of the United States, or between a State or the Territory of Alaska and any one of the insular possessions of the United States or any foreign country".

TRANSFER OF FUNCTIONS

Secretary of Transportation substituted for Interstate Commerce Commission, see Transfer of Functions note set out under section 260 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 260, 260a, 261, 266, 267 of this title; title 49 section 1655.

§ 263. Designation of zone standard times

The standard time of the first zone shall be known and designated as Atlantic standard time; that of the second zone shall be known and designated as eastern standard time; that of the third zone shall be known and designated as central standard time; that of the fourth zone shall be known and designated as mountain standard time; that of the fifth zone shall be known and designated as Pacific standard time; that of the sixth zone shall be known and designated as Yukon standard time; that of the seventh zone shall be known and designated as Alaska-Hawaii standard time; and that of the eighth zone shall be known and designated as Bering standard time.

(Mar. 19, 1918, ch. 24, § 4, 40 Stat. 451; Apr. 13, 1966, Pub. L. 89-387, § 4(c), 80 Stat. 108.)

AMENDMENTS

1966—Pub. L. 89-387 added Atlantic standard time as first zone designation; redesignated as eastern standard time, central standard time, mountain standard time and Pacific standard time for second through fifth zones former designation of United States standard eastern time, United States standard central time, United States standard mountain time and United States standard Pacific time for former zones one through four; added Yukon standard time as sixth zone designation; redesignated as Alaska-Hawaii standard time for seventh zone former designation of United States standard Alaska time for fifth zone; and added Bering standard time as eighth zone designation.

TRANSFER OF FUNCTIONS

All functions, powers, and duties of this Interstate Commerce Commission and the Chairman, members, offices, and officers thereof relating generally to standard time zones and daylight savings time under this section were transferred to and vested in the Secretary of Transportation by Pub. L. 89-670, §§ 3(a), 6(e)(5)(C), Oct. 15, 1966, 80 Stat. 931, 939, which created the Department of Transportation. See section 1655(e)(5) of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 260, 260a, 261, 262, 266, 267 of this title; title 49 section 1655.

§ 264. Part of Idaho in third zone

In the division of territory, and in the definition of the limits of each zone, as provided in sections 261 to 264 of this title, so much of the State of Idaho as lies south of the Salmon River, traversing the State from east to west near forty-five degree thirty minutes latitude, shall be embraced in the third zone: *Provided*, That common carriers within such portion of the State of Idaho may conduct their operations on Pacific time.

(Mar. 19, 1918, ch. 24, § 3, as added Mar. 3, 1923, ch. 216, 42 Stat. 1434, and amended June 24, 1948, ch. 631, § 1, 62 Stat. 646.)

AMENDMENTS

1948—Act June 24, 1948, added proviso relating to common carriers.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 2 of act June 24, 1948, provided that: "This Act [amending this section] shall take effect at 2 o'clock antemeridian of the second Monday following the date of its enactment."

PRIOR PROVISIONS

The original section 3 of act Mar. 19, 1918, providing for daylight-savings, was repealed by act Aug. 20, 1919, ch. 51, 41 Stat. 280.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Interstate Commerce Commission relating to time zones and to daylight savings time to the Secretary of Transportation, see Transfer of Functions note set out under section 263 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 260, 260a, 261, 262, 266 of this title; title 49 section 1655.

§ 265. Transfer of certain territory to standard central-time zone

The Panhandle and Plains sections of Texas and Oklahoma are transferred to and placed within the United States standard central-time zone.

The Secretary of Transportation is authorized and directed to issue an order placing the western boundary line of the United States standard central-time zone insofar as the same affect Texas and Oklahoma as follows:

Beginning at a point where such western boundary time zone line crosses the State boundary line between Kansas and Oklahoma; thence westerly along said State boundary line to the northwest corner of the State of Oklahoma; thence in a southerly direction along the west State boundary line of Oklahoma and the west State boundary line of Texas to the southeastern corner of the State of New Mexico; thence in a westerly direction along the State boundary line between the States of Texas and New Mexico to the Rio Grande River; thence down the Rio Grande River as the boundary line between the United States and Mexico: *Provided,* That the Chicago, Rock Island and Gulf Railway Company and the Chicago, Rock Island and Pacific Railway Company may use Tucumcari, New Mexico, as the point at which they change from central to mountain time and vice versa; the Colorado Southern and Fort Worth and Denver City Railway Companies may use Sixela, New Mexico, as such changing point; the Atchison, Topeka and Santa Fe Railway Company and other branches of the Santa Fe system may use Clovis, New Mexico, as such changing point, and those railways running into or through El Paso may use El Paso as such point: *Provided further,* That this section shall not, except as herein provided, interfere with the adjustment of time zones as established by the Secretary of Transportation.

(Mar. 4, 1921, ch. 173, § 1, 41 Stat. 1446; Oct. 15, 1966, Pub. L. 89-670, §§ 3(a), 6(e)(5)(C), 80 Stat. 931, 939.)

REPEALS

Section 2 of act Mar. 4, 1921, repealed all conflicting laws and parts of laws.

TRANSFER OF FUNCTIONS

Secretary of Transportation substituted for Interstate Commerce Commission, see Transfer of Functions note set out under section 260 of this title.

TRANSFER OF EL PASO AND HUDSPETH COUNTIES, TEXAS, TO MOUNTAIN STANDARD TIME ZONE

Pub. L. 91-228, Apr. 10, 1970, 84 Stat. 119, provided: "That, notwithstanding the first section of the Act of March 4, 1921 (15 U.S.C. 265) [this section], the Secretary of Transportation may, upon the written request of the County Commissioners Court of El Paso County, Texas, change the boundary line between the central standard time zone and the mountain standard time zone, so as to place El Paso County in the mountain standard time zone, in the manner prescribed in section 1 of the Act of March 19, 1918, as amended (15 U.S.C. 261), and section 5 of the Act of April 13, 1966 (15 U.S.C. 266). In the same manner, the Secretary of Transportation may also place Hudspeth County, Texas, in the mountain standard time zone, if the Hudspeth County Commissioners Court so requests in writing and if El Paso County is to be placed in that time zone."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 260, 260a, 266 of this title; title 49 section 1655.

§ 266. Applicability of administrative procedure provisions

Subchapter II of chapter 5, and chapter 7, of title 5 shall apply to all proceedings under this Act, sections 261 to 264 of this title, and section 265 of this title.

(Pub. L. 89-387, § 5, Apr. 13, 1966, 80 Stat. 108.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 89-387, known as the "Uniform Time Act of 1966". For classification of this Act to the Code, see Short Title note set out under section 260 of this title.

CODIFICATION

"Subchapter II of chapter 5, and chapter 7, of title 5" was substituted for "The Administrative Procedure Act (5 U.S.C. 1001-1011)" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Interstate Commerce Commission relating to time zones and to daylight savings time to the Secretary of Transportation, see Transfer of Functions note set out under section 263 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 267 of this title; title 49 section 1655.

§ 267. State defined

As used in this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States.

(Pub. L. 89-387, § 7, Apr. 13, 1966, 80 Stat. 109.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 89-387, known as the "Uniform Time Act of 1966". For classification of this Act to the Code, see Short Title note set out under section 260 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Interstate Commerce Commission relating to time zones and to daylight savings time to the Secretary of Transportation, see Transfer of Functions note set out under section 263 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 266 of this title; title 49 section 1655.

CHAPTER 7—THE BUREAU OF STANDARDS

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 290d of this title.

§ 271. Bureau established

The Office of Standard Weights and Measures shall be known as the National Bureau of Standards.

(Mar. 3, 1901, ch. 872, § 1, 31 Stat. 1449.)

CHANGE OF NAME

Act Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736, created the "Department of Labor" and renamed the "Department of Commerce and Labor" the "Department of Commerce".

TRANSFER OF FUNCTIONS

The functions of all other officers of the Department of Commerce and the functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 5 of 1950, §§ 1,2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Act Feb. 14, 1903, ch. 552, § 4, 32 Stat. 826, transferred the National Bureau of Standards from the Department of the Treasury to the Department of Commerce and Labor.

Functions of the National Bureau of Standards under this section which were performed by the Division of Commercial Standards and the Division of Simplified Trade and Practice were transferred to the Secretary of Commerce to be performed, subject to his direction and control by such offices and agencies of the Department of Commerce as he may designate, by Reorg. Plan No. 3 of 1946, § 601, eff. July 16, 1946, 11 F.R. 7877, 60 Stat. 1100, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Department of Commerce as having jurisdiction and supervision over the National Bureau of Standards, see section 1511 of this title.

§ 272. Functions of Secretary

The Secretary of Commerce (hereinafter referred to as the "Secretary") is authorized to undertake the following functions:

(a) The custody, maintenance, and development of the national standards of measurement, and the provision of means and methods for making measurements consistent with those standards, including the comparison of standards used in scientific investigations, engineering, manufacturing, commerce, and educational institutions with the standards adopted or recognized by the Government.

(b) The determination of physical constants and properties of materials when such data are of great importance to scientific or manufacturing interests and are not to be obtained of sufficient accuracy elsewhere.

(c) The development of methods for testing materials, mechanisms, and structures, and the testing of materials, supplies, and equipment, including items purchased for use of Government departments and independent establishments.

(d) Cooperation with other governmental agencies and with private organizations in the establishment of standard practices, incorporated in codes and specifications.

(e) Advisory service to Government agencies on scientific and technical problems.

(f) Invention and development of devices to serve special needs of the Government.

In carrying out the functions enumerated in this section, the Secretary is authorized to undertake the following activities and similar ones for which need may arise in the operations of Government agencies, scientific institutions, and industrial enterprises:

(1) the construction of physical standards;

(2) the testing, calibration, and certification of standards and standard measuring apparatus;

(3) the study and improvement of instruments and methods of measurements;

(4) the investigation and testing of railroad track scales, elevator scales, and other scales used in weighing commodities for interstate shipment;

(5) cooperation with the States in securing uniformity in weights and measures laws and methods of inspection;

(6) the preparation and distribution of standard samples such as those used in checking chemical analyses, temperature, color, viscosity, heat of combustion, and other basic properties of materials; also the preparation and sale or other distribution of standard instruments, apparatus and materials for calibration of measuring equipment;

(7) the development of methods of chemical analysis and synthesis of materials, and the investigation of the properties of rare substances;

(8) the study of methods of producing and of measuring high and low temperatures; and the behavior of materials at high and at low temperatures;

(9) the investigation of radiation, radioactive substances, and X-rays, their uses, and means of protection of persons from their harmful effects;

(10) the study of the atomic and molecular structure of the chemical elements, with particular reference to the characteristics of the spectra emitted, the use of spectral observations in determining chemical composition of materials, and the relation of molecular structure to the practical usefulness of materials;

(11) the broadcasting of radio signals of standard frequency;

(12) the investigation of the conditions which affect the transmission of radio waves from their source to a receiver;

(13) the compilation and distribution of information on such transmission of radio waves as a basis for choice of frequencies to be used in radio operations;

(14) the study of new technical processes and methods of fabrication of materials in which the Government has a special interest; also the study of methods of measurement and technical processes used in the manufacture of optical glass and pottery, brick, tile, terra cotta, and other clay products;

(15) the determination of properties of building materials and structural elements, and encouragement of their standardization and most effective use, including investigation of fire-resisting properties of building materials and conditions under which they may be most efficiently used, and the standardization of types of appliances for fire prevention;

(16) metallurgical research, including study of alloy steels and light metal alloys; investigation of foundry practice, casting, rolling, and forging; prevention of corrosion of metals and alloys; behavior of bearing metals; and development of standards for metals and sands;

(17) the operation of a laboratory of applied mathematics;

(18) the prosecution of such research in engineering, mathematics, and the physical sciences as may be necessary to obtain basic data pertinent to the functions specified herein; and

(19) the compilation and publication of general scientific and technical data resulting from the performance of the functions specified herein or from other sources when such data are of importance to scientific or manufacturing interests or to the general public, and are not available elsewhere, including demonstration of the results of the Bureau's work by exhibits or otherwise as may be deemed most effective, and including the use of National Bureau of Standards scientific or technical personnel for part-time or intermittent teaching and training activities at educational institutions of higher learning as part of and incidental to their official duties and without additional compensation other than that provided by law.

(Mar. 3, 1901, ch. 872, § 2, 31 Stat. 1449; July 22, 1950, ch. 486, § 1, 64 Stat. 371; June 22, 1972, Pub. L. 92-317, § 3(b), 86 Stat. 235.)

AMENDMENTS

1972—Par. (19). Pub. L. 92-317 added provisions authorizing the use of National Bureau of Standards personnel for teaching and training activities without additional compensation.

1950—Act July 22, 1950, provided basic authority for the performance of certain functions and activities of the Department of Commerce.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce to the Secretary of Commerce, with certain exceptions, see Transfer of Functions note set out under section 271 of this title.

CONSTRUCTION OF RADIO LABORATORY BUILDING

Act Oct. 25, 1949, ch. 703, 63 Stat. 886, provided for the construction and equipment of a suitable radio laboratory building, together with necessary utilities and appurtenances thereto, under a limit of cost of $4,475,000, for the National Bureau of Standards.

CONSTRUCTION OF A GUIDED-MISSILE RESEARCH LABORATORY

Act Oct. 25, 1949, ch. 728, 63 Stat. 905, provided for the construction and equipment of a research laboratory building, suitable for use as a guided-missile laboratory, together with necessary utilities and appurtenances thereto, under a limit of cost of $1,900,000, for the National Bureau of Standards.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1454 of this title.

§ 273. Functions; for whom exercised

The Bureau is authorized to exercise its functions for the Government of the United States and for international organizations of which the United States is a member; for governments of friendly countries; for any State or municipal government within the United States; or for any scientific society, educational institution, firm, corporation, or individual within the United States or friendly countries engaged in manufacturing or other pursuits requiring the use of standards or standard measuring instruments: *Provided*, That the exercise of these functions for international organizations, governments of friendly countries and scientific societies, educational institutions, firms, corporations, or individuals therein shall be in coordination with other agencies of the United States Government, in particular the Department of State in respect to foreign entities. All requests for the services of the bureau shall be made in accordance with the rules and regulations herein established.

(Mar. 3, 1901, ch. 872, § 3, 31 Stat. 1449; June 22, 1972, Pub. L. 92-317, § 3(c), 86 Stat. 235.)

REFERENCES IN TEXT

"Herein", referred to in last sentence of this section, refers to act Mar. 3, 1901, ch. 872, which comprises all sections of this chapter other than sections 279 to 282.

AMENDMENTS

1972—Pub. L. 92-317 authorized the Bureau to extend its services to international organizations of which the United States is a member, and for governments of friendly countries in coordination with the Department of State.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce to the Secretary of Commerce, with certain exceptions, see Transfer of Functions note set out under section 271 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 275a, 276, 278b of this title.

§ 274. Director; powers and duties; report

The director shall be appointed by the President, by and with the advice and consent of the Senate. He shall have the general supervision of the bureau, its equipment, and the exercise of its functions. He shall make an annual report to the Secretary of Commerce, including an abstract of the work done during the year and a financial statement. He may issue, when necessary, bulletins for public distribution, containing such information as may be of value to the public or facilitate the bureau in the exercise of its functions.

(Mar. 3, 1901, ch. 872, § 5, 31 Stat. 1449; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce to the Secretary of Commerce, with certain exceptions, see Transfer of Functions note set out under section 271 of this title.

Act Feb. 14, 1903, transferred power and authority of Secretary of Treasury over Bureau of Standards to the Secretary of Commerce and Labor.

§ 275. Appointment of officers and employees

The officers and employees of the bureau, except the director, shall be appointed by the Secretary of Commerce at such time as their respective services may become necessary.

(Mar. 3, 1901, ch. 872, § 6, 31 Stat. 1450; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce to the Secretary of Commerce, with certain exceptions, see Transfer of Functions note set out under section 271 of this title.

Act Feb. 14, 1903, transferred power and authority of Secretary of Treasury over Bureau of Standards to the Secretary of Commerce and Labor.

§ 275a. Service charges

The Secretary shall charge for services performed under the authority of section 273 of this title, except in cases where he determines that the interest of the Government would be best served by waiving the charge. Such charges may be based upon fixed prices or costs. The appropriation or fund bearing the cost of the services may be reimbursed, or the Secretary may require advance payment subject to such adjustment on completion of the work as may be agreed upon.

(Mar. 3, 1901, ch. 872, § 7, as added Aug. 3, 1956, ch. 906, § 1, 70 Stat. 959.)

CODIFICATION

Provisions relating to fees were formerly contained in section 276 of this title.

§ 276. Ownership of facilities

In the absence of specific agreement to the contrary, additional facilities, including equipment, purchased pursuant to the performance of services authorized by section 273 of this title shall become the property of the Department of Commerce.

(Mar. 3, 1901, ch. 872, § 8, 31 Stat. 1450; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; June 30, 1932, ch. 314, § 312, 47 Stat. 410; Aug. 3, 1956, ch. 906, § 1, 70 Stat. 959.)

AMENDMENTS

1956—Act Aug. 3, 1956, substituted provisions relating to ownership of additional facilities by the Department of Commerce (formerly contained in section 278b of this title) for those relating to fees, which are now covered by section 275a of this title.

1932—Act June 30, 1932, added provision for payment of moneys into the Treasury, among other changes.

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

EFFECTIVE DATE OF 1932 AMENDMENT

Section 314 of act June 30, 1932, provided that the amendment of this section shall take effect July 1, 1932.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce to the Secretary of Commerce, with certain exceptions, see Transfer of Functions note set out under section 271 of this title.

Act Feb. 14, 1903, transferred power and authority of Secretary of Treasury over Bureau of Standards to the Secretary of Commerce and Labor.

§ 277. Regulations

The Secretary of Commerce shall, from time to time, make regulations regarding the payment of fees, the limits of tolerance to be attained in standards submitted for verification, the sealing of standards, the disbursement and receipt of moneys, and such other matters as he may deem necessary for carrying this chapter into effect.

(Mar. 3, 1901, ch. 872, § 9, 31 Stat. 1450; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act" meaning act Mar. 3, 1901, ch. 872, which comprises all sections of this chapter other than sections 279 to 282.

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

TRANSFER OF FUNCTIONS

Act Feb. 14, 1903, transferred power and authority of Secretary of Treasury over Bureau of Standards to the Secretary of Commerce and Labor.

§ 278. Visiting committee

There shall be a visiting committee of five members to be appointed by the Secretary of Commerce, to consist of men prominent in the various interests involved, and not in the employ of the Government. This committee shall visit the bureau at least once a year, and report to the Secretary of Commerce upon the efficiency of its scientific work and the condition of its equipment. The members of this committee shall serve without compensation, but shall be paid the actual expenses incurred in attending its meetings. The period of service of the members of the committee shall be so arranged that one member shall retire each year, and the appointments to be for a period of five years. Appointments made to fill vacancies occurring other than in the regular manner are to be made for the remainder of the period in which the vacancy exists.

(Mar. 3, 1901, ch. 872, § 10, 31 Stat. 1450; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

Change of Name

Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of the Department of Commerce to the Secretary of Commerce, with certain exceptions, see Transfer of Functions note set out under section 271 of this title.

Act Feb. 14, 1903, transferred power and authority of Secretary of Treasury over Bureau of Standards to the Secretary of Commerce and Labor.

§ 278a. Repealed. Pub. L. 88-611, § 4(a)(1), Oct. 2, 1964, 78 Stat. 991

Section, act Mar. 3, 1901, ch. 872, § 11, as added July 22, 1950, ch. 486, § 2, 64 Stat. 373, and amended Aug. 3, 1956, ch. 906, § 2, 70 Stat. 959; Sept. 2, 1958, Pub. L. 85-890, § 2, 72 Stat. 1712, provided for acceptance of gifts and bequests, and is now covered by sections 1522 and 1523 of this title.

§ 278b. Working Capital Fund

(a) Utilization; appropriations

The National Bureau of Standards is authorized to utilize in the performance of its functions the Working Capital Fund established by the Act of June 29, 1950 (64 Stat. 275), and additional amounts as from time to time may be required for the purposes of said fund are authorized to be appropriated.

(b) Availability of Fund

The working capital of the fund shall be available for obligation and payment for any activities authorized by this chapter, and for any activities for which provision is made in the appropriations which reimburse the fund.

(c) Reimbursements

In the performance of authorized activities, the Working Capital Fund shall be available and may be reimbursed for expenses of hire of automobile, hire of consultants, and travel to meetings, to the extent that such expenses are authorized for the appropriations of the Department of Commerce.

(d) Credits

The fund may be credited with advances and reimbursements, including receipts from non-Federal sources, for services performed under the authority of section 273 of this title.

(e) Cost defined

As used in this chapter, the term "cost" shall be construed to include directly related expenses and appropriate charges for indirect and administrative expenses.

(f) Distribution of earnings; restoration of prior impairment

The amount of any earned net income resulting from the operation of the fund at the close of each fiscal year shall be paid into the general fund of the Treasury: *Provided*, That such earned net income may be applied first to restore any prior impairment of the fund.

(Mar. 3, 1901, ch. 872, § 12, as added Aug. 3, 1956, ch. 906, § 2, 70 Stat. 959.)

References in Text

Act of June 29, 1950 (64 Stat. 275), referred to in subsec. (a), was the Deficiency Appropriation Act, 1950. Provisions thereof relating to Working Capital Fund are not classified to the Code.

This chapter, referred to in subsecs. (b) and (c), in the original read "this Act" meaning act Mar. 3, 1901, ch. 872, which comprises all sections of this chapter other than sections 279 to 282.

Prior Provisions

Former section 12 of act Mar. 3, 1901, ch. 872, as added by act July 22, 1950, ch. 486, § 2, 64 Stat. 373, which related to equipment purchased by the Department of Commerce to carry out investigations, was struck out by act Aug. 3, 1956, ch. 906, § 2, 70 Stat. 959, which added a new section 12 to the act of Mar. 3, 1901.

§ 278c. Acquisition of land for field sites

To the extent that funds are specifically appropriated therefor, the Secretary of Commerce is authorized to acquire land for such field sites as are necessary for the proper and efficient conduct of the activities authorized herein.

(Mar. 3, 1901, ch. 872, § 13, as added Sept. 2, 1958, Pub. L. 85-890, § 1, 72 Stat. 1711.)

References in Text

"Herein", referred to in text, refers to act Mar. 3, 1901, ch. 872, which comprises all sections of this chapter other than sections 279 to 282.

Prior Provisions

Former section 13 of act Mar. 3, 1901, ch. 872, as added July 22, 1950, ch. 486, § 2, 64 Stat. 373, which related to acceptance of gifts and bequests, was struck out by act Aug. 3, 1956, ch. 906, § 2, 70 Stat. 959 and is now covered by sections 1522 and 1523 of this title.

§ 278d. Construction and improvement of buildings and facilities

Within the limits of funds which are appropriated for the National Bureau of Standards, the Secretary of Commerce is authorized to undertake such construction of buildings and other facilities and to make such improvements to existing buildings, grounds, and other facilities occupied or used by the National Bureau of Standards as are necessary for the proper and efficient conduct of the activities authorized herein: *Provided*, That no improvement shall be made nor shall any building be constructed under this authority at a cost in excess of $75,000 unless specific provision is made therefor in the appropriation concerned.

(Mar. 3, 1901, ch. 872, § 14, as added Sept. 2, 1958, Pub. L. 85-890, § 1, 72 Stat. 1711, and amended June 22, 1972, Pub. L. 92-317, § 3(d), 86 Stat. 235.)

REFERENCES IN TEXT

"Herein", referred to in text, refers to act Mar. 3, 1901, ch. 872, which comprises all sections of this chapter other than sections 279 to 282.

AMENDMENTS

1972—Pub. L. 92-317 substituted "$75,000" for "$40,000".

§ 278e. Functions and activities

In the performance of the functions of the National Bureau of Standards the Secretary of Commerce is authorized to undertake the following activities: (a) The purchase, repair, and cleaning of uniforms for guards; (b) the care, maintenance, protection, repair, and alteration of Bureau buildings and other plant facilities, equipment, and property; (c) the rental of field sites and laboratory, office, and warehouse space; (d) the purchase of reprints from technical journals or other periodicals and the payment of page charges for the publication of research papers and reports in such journals; (e) the furnishing of food and shelter without repayment therefor to employees of the Government at Arctic and Antarctic stations; (f) for the conduct of observations on radio propagation phenomena in the Arctic or Antarctic regions, the appointment of employees at base rates established by the Secretary of Commerce which shall not exceed such maximum rates as may be specified from time to time in the appropriation concerned, and without regard to the civil service and classification laws and sections 5542 to 5546 of title 5; and (g) the erection on leased property of specialized facilities and working and living quarters when the Secretary of Commerce determines that this will best serve the interests of the Government.

(Mar. 3, 1901, ch. 872, § 15, as added Sept. 2, 1958, Pub. L. 85-890, § 1, 72 Stat. 1711, and amended June 22, 1972, Pub. L. 92-317, § 3(e), 86 Stat. 235.)

REFERENCES IN TEXT

The civil service laws, referred to in cl. (f), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that Title.

The classification laws, referred to in cl. (f), are set forth in chapter 51 (§ 5101 et seq.) and subchapter III (§ 5331 et seq.) of chapter 53 of Title 5.

CODIFICATION

Sections 5542 to 5546 of title 5, referred to in text, were substituted for "titles II and III of the Federal Employees Act of 1945" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1972—Pub. L. 92-317 substituted, in cl. (b), "the care, maintenance, protection, repair, and alteration of Bureau buildings and other plant facilities, equipment, and property" for "the repair and alteration of buildings and other plant facilities".

§ 278f. Fire Research Center

(a) Establishment; programs of research; functions of Secretary; dissemination of information

There is hereby established within the Department of Commerce a Fire Research Center which shall have the mission of performing and supporting research on all aspects of fire with the aim of providing scientific and technical knowledge applicable to the prevention and control of fires. The content and priorities of the research program shall be determined in consultation with the Administrator of the National Fire Prevention and Control Administration. In implementing this section, the Secretary is authorized to conduct, directly or through contracts or grants, a fire research program, including—

(1) basic and applied fire research for the purpose of arriving at an understanding of the fundamental processes underlying all aspects of fire. Such research shall include scientific investigations of—

(A) the physics and chemistry of combustion processes;

(B) the dynamics of flame ignition, flame spread, and flame extinguishment;

(C) the composition of combustion products developed by various sources and under various environmental conditions;

(D) the early stages of fires in buildings and other structures, structural subsystems and structural components in all other types of fires, including, but not limited to, forest fires, brush fires, fires underground, oil blowout fires, and waterborne fires, with the aim of improving early detection capability;

(E) the behavior of fires involving all types of buildings and other structures and their contents (including mobile homes and highrise buildings, construction materials, floor and wall coverings, coatings, furnishings, and other combustible materials), and all other types of fires, including forest fires, brush fires, fires underground, oil blowout fires, and waterborne fires;

(F) the unique fire hazards arising from the transportation and use, in industrial and professional practices, of combustible gases, fluids, and materials;

(G) design concepts for providing increased fire safety consistent with habitability, comfort, and human impact in buildings and other structures; and

(H) such other aspects of the fire process as may be deemed useful in pursuing the objectives of the fire research program;

(2) research into the biological, physiological, and psychological factors affecting human victims of fire, and the performance of individual members of fire services, including—

(A) the biological and physiological effects of toxic substances encountered in fires;

(B) the trauma, cardiac conditions, and other hazards resulting from exposure to fire;

(C) the development of simple and reliable tests for determining the cause of death from fires;

(D) improved methods of providing first aid to victims of fires;

(E) psychological and motivational characteristics of persons who engage in arson, and the prediction and cure of such behavior;

(F) the conditions of stress encountered by firefighters, the effects of such stress, and the alleviation and reduction of such conditions; and

(G) such other biological, psychological, and physiological effects of fire as have significance for purposes of control or prevention of fires; and

(3) operation tests, demonstration projects, and fire investigations in support of the activities set forth in this section.

The Secretary shall insure that the results and advances arising from the work of the research program are disseminated broadly. He shall encourage the incorporation, to the extent applicable and practicable, of such results and advances in building codes, fire codes, and other relevant codes, test methods, fire service operations and training, and standards. The Secretary is authorized to encourage and assist in the development and adoption of uniform codes, test methods, and standards aimed at reducing fire losses and costs of fire protection.

(b) Authorization of appropriations

For purposes of this section, there are authorized to be appropriated not to exceed $1,275,000 for the transitional fiscal quarter of July 1, 1976, through September 30, 1976, not to exceed $5,500,000 for the fiscal year ending September 30, 1977, and not to exceed $6,000,000 for the fiscal year ending September 30, 1978.

(Mar. 3, 1901, ch. 872, § 16, as added Oct. 29, 1974, Pub. L. 93-498, § 18, 88 Stat. 1545, and amended Sept. 13, 1976, Pub. L. 94-411, § 1(b), 90 Stat. 1254.)

PRIOR PROVISIONS

Former section 16 of act Mar. 3, 1901, as added by act Mar. 1, 1968, Pub. L. 90-259, title I, § 102, 82 Stat. 35, which related to fire research and safety programs, was struck out by section 18 of act Oct. 29, 1974, Pub. L. 93-498, 88 Stat. 1545, which added a new section 16 to act of Mar. 3, 1901.

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-411 substituted provisions authorizing to be appropriated not to exceed $1,275,000 for the transitional fiscal quarter of July 1, 1976, through Sept. 30, 1976, not to exceed $5,500,000 for the fiscal year ending Sept. 30, 1977, and not to exceed $6,000,000 for the fiscal year ending Sept. 30, 1978, for provisions authorizing to be appropriated not to exceed $3,500,000 for the fiscal year ending June 30, 1975, and not to exceed $4,000,000 for the fiscal year ending June 30, 1976.

TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless; in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in the Appendix to Title 5, Government Organization and Employees.

NATIONAL COMMISSION ON FIRE PREVENTION AND CONTROL

Pub. L. 90-259, §§ 101, 103, 104, and 201 to 207, established the National Commission on Fire Prevention and Control, directed the commission to study and investigate measures to reduce the destructive effects of fire throughout the country, and provided that the commission cease to exist thirty days after the submission of its report which was to be made no later than two years after the commission had been organized.

EX. ORD. NO. 11654. FEDERAL FIRE COUNCIL

EX. ORD. No. 11654, Mar. 13, 1972, 37 F.R. 5361, provided:

By virtue of the authority vested in me as President of the United States, and in furtherance of the purpose and policy of the Fire Research and Safety Act of 1968 (15 U.S.C. 278f-278g), it is hereby ordered as follows:

SECTION 1. The Federal Fire Council, and advisory agency in matters relating to the protection of Federal employees and property from fire, which was established within the General Services Administration by Executive Order No. 7397 of June 20, 1936, as amended by Executive Order No. 10257 of June 23, 1951, is hereby transferred to and established in the Department of Commerce. The Federal Fire Council, hereinafter referred to as the Council, shall, in the exercise of its functions, be responsible to the Secretary of Commerce. The Secretary or his designee shall serve as Chairman of the Council.

SEC. 2. Members of the Council, who shall serve without additional compensation, shall be officers or employees of the various departments and agencies of the Federal Government, and of the Government of the District of Columbia designated by the respective heads thereof. Each department and agency, and the Government of the District of Columbia, shall be entitled to designate one member of the Council and may designate such additional members as the governing body of the Council may authorize.

SEC. 3. The Council shall have a governing body composed of the Chairman of the Council, who shall also serve as its Chairman, and representatives of the Secretaries of the Interior, Health, Education, and Welfare, Housing and Urban Development, the Army, the Navy, and the Air Force and of the Administrator of General Services. The Chairman shall appoint such other officers and committees as he may deem necessary to carry out the functions of the Council.

SEC. 4. The Council is authorized to develop standards, procedures, and forms, and, on request, to conduct surveys or such other investigations as may be necessary to determine what measures should be taken to safeguard life and property from the hazards of fire, including review of plans for new construction. The Council is also authorized to make such independent studies of Federal buildings and property as it may deem desirable from the standpoint of fire protection and to maintain a record of fire losses on Government property.

SEC. 5. The Council shall report the results of such investigations and studies to the head of the agency concerned, together with its recommendations.

SEC. 6. In case of fires involving Government records, the agency concerned should notify the National Archives and Records Service of the General Services Administration and obtain its advice as to methods by which the maximum salvage of the records involved may be secured.

SEC. 7. In carrying out their functions under this order, the Council, its governing body, and the Secretary of Commerce shall consult, as appropriate, with the Federal Advisory Council on Occupational Safety and Health established by Executive Order No. 11612 of July 26, 1971 [set out as a note under section 7902 of Title 5, Government Organization and Employees].

SEC. 8. Executive Orders No. 7397 of June 20, 1936, and No. 10257 of June 23, 1951, are hereby superseded.

RICHARD NIXON.

CROSS REFERENCES

Federal Fire Prevention and Control Act, see section 2201 et seq. of this title.

§ 278g. Repealed. Pub. L. 93-498, § 18, Oct. 29, 1974, 88 Stat. 1545

Section, act Mar. 3, 1901, ch. 872, § 17, as added Mar. 1, 1968, Pub. L. 90-259, title I, § 102, 82 Stat. 35, related to grants to states, local governments, other non-federal public agencies, and non-profit institutions, reimbursement of federal agencies, delegation of powers, advance of public moneys, cooperation of federal agencies, and issuance of rules and regulations.

§ 278h. Availability of appropriated funds

Appropriations to carry out the provisions of this chapter may remain available for obligation and expenditure for such period or periods as may be specified in the Acts making such appropriations.

(Mar. 3, 1901, ch. 872, § 18, as added June 22, 1972, Pub. L. 92-317, § 3(a), 86 Stat. 235.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act" meaning act Mar. 3, 1901, ch. 872, which comprises all sections of this chapter other than sections 279 to 282.

§ 279. Absence of Director

In the case of the absence of the Director of the Bureau of Standards the Secretary of Commerce may designate some officer of said bureau to perform the duties of the director during his absence.

(Mar. 4, 1911, ch. 237, § 1, 36 Stat. 1231; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

CODIFICATION

Section was not enacted as part of act Mar. 3, 1901, ch. 872, which comprises this chapter.

CHANGE OF NAME

Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce to the Secretary of Commerce, with certain exceptions, see Transfer of Functions note set out under section 271 of this title.

§ 280. Apprentices; promotion

Apprentices in the Bureau of Standards may be promoted after satisfactory apprenticeship, with the approval of the Civil Service Commission, to positions corresponding to the journeyman grades for which their duties logically prepare them, without regard to apportionment: *Provided,* That they thus acquire no rights to transfer to other lines of work.

(July 16, 1914, ch. 141, § 1, 38 Stat. 502.)

CODIFICATION

Section was not enacted as part of act Mar. 3, 1901, ch. 872, which comprises this chapter.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce to the Secretary of Commerce, with certain exceptions, see Transfer of Functions note set out under section 271 of this title.

CROSS REFERENCES

Classification of civilian positions, see section 5101 et seq. of Title 5, Government Organization and Employees.

§ 281. Testing materials for District of Columbia

Materials for fireproof buildings, other structural materials, and all materials, other than materials for paving and for fuel, purchased for and to be used by the government of the District of Columbia, when necessary in the judgment of the Mayor to be tested, shall be tested by the Bureau of Standards under the same conditions as similar testing is required to be done for the United States Government.

(Mar. 4, 1913, ch. 150, 37 Stat. 945; 1967 Reorg. Plan No. 3, § 401, eff. Aug. 11, 1967, 32 F.R. 11669, 81 Stat. 948; Dec. 24, 1973, Pub. L. 93-198, title IV, § 421, title VII, § 711, 87 Stat. 789, 818.)

CODIFICATION

Section was not enacted as part of act Mar. 3, 1901, ch. 872, which comprises this chapter.

Section is also set out in D.C. Code, § 1-813.

TRANSFER OF FUNCTIONS

Except as otherwise provided in Reorg. Plan No. 3 of 1967, eff. Aug. 11, 1967 (in part), 32 F.R. 11669, 81 Stat. 948, all functions of the Board of Commissioners of the District of Columbia were transferred to the Commissioner of the District of Columbia by section 401 of Reorg. Plan No. 3 of 1967. The office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, was abolished as of noon Jan. 2, 1975, by Pub. L. 93-198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, and replaced by the office of Mayor of the District of Columbia by section 421 of Pub. L. 93-198, classified to section 1-161 of the District of Columbia Code. Accordingly, "Mayor" was substituted for "commissioners".

For transfer of functions of other officers, employees, and agencies of the Department of Commerce to the Secretary of Commerce, with certain exceptions, see Transfer of Functions note set out under section 271 of this title.

§ 282. National hydraulic laboratory; establishment; purpose; study of Federal and State projects

There is authorized to be established in the Bureau of Standards of the Department of Commerce a national hydraulic laboratory for the determination of fundamental data useful in hydraulic research and engineering, including laboratory research relating to the behavior and control of river and harbor waters, the study of hydraulic structures and water flow, and the development and testing of hydraulic instruments and accessories: *Provided,* That no test, study, or other work on a problem or problems connected with a project the prosecution of which is under the jurisdiction of any department or independent agency of the Government shall be undertaken in the laboratory herein authorized until a written request to do such work is submitted to the Director of the Bureau of Standards by the head of the department or independent agency charged with the execution of such project: *And provided further,* That any State or political subdivision thereof may obtain a test, study, or other work on a problem connected with a project the prosecution of which is under the jurisdiction of such State or political subdivision thereof.

(May 14, 1930, ch. 275, § 1, 46 Stat. 327.)

CODIFICATION

Section was not enacted as part of act Mar. 3, 1901, ch. 872, which comprises this chapter.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce to the Secretary of Commerce, with certain exceptions, see Transfer of Functions note set out under section 271 of this title.

§ 283. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 655, 656

Section, acts July 20, 1949, ch. 354, title III, § 301, 63 Stat. 468; Sept. 6, 1950, ch. 896, Ch. III, title III, § 301, 64 Stat. 628, related to the appointment of personnel observing radio propagation phenomena in the Arctic Region.

§ 284. Omitted

CODIFICATION

Section, acts Oct. 22, 1951, ch. 533, title III, § 301, 65 Stat. 593; Sept. 6, 1950, ch. 896, ch. III, title III, § 301, 64 Stat. 628; July 20, 1949, ch. 354, title III, § 301, 63 Stat. 468, which related to transfer of materials, etc., to Bureau of ionosphere observation by Departments of the Army, Navy, and Air Force, was from the Department of Commerce Appropriation Act, 1952, and has not been repeated in subsequent appropriation acts.

§§ 285, 286. Repealed. Pub. L. 85-890, § 3, Sept. 2, 1958, 72 Stat. 1712

Section 285, act July 21, 1950, ch. 485, § 1, 64 Stat. 370, related to functions and activities of National Bureau of Standards that funds should be available for, and is now covered by section 278e of this title. Section 286, act July 21, 1950, ch. 485, § 2, 64 Stat. 371, related to construction and improvement of buildings and facilities, and is now covered by section 278d of this title.

CHAPTER 7A—STANDARD REFERENCE DATA PROGRAM

Sec.
290. Congressional declaration of policy.
290a. Definitions.
290b. Collection, compilation, critical evaluation, publication and dissemination of standard reference data.
290c. Standards, criteria, and procedures for preparation and publication of standard reference data; publication in Federal Register.
290d. Sale of standard reference data; cost recovery; proceeds subject to Bureau of Standards.
290e. United States copyright and renewal rights.
290f. Authorization of appropriations.

§ 290. Congressional declaration of policy

The Congress hereby finds and declares that reliable standardized scientific and technical reference data are of vital importance to the progress of the Nation's science and technology. It is therefore the policy of the Congress to make critically evaluated reference data readily available to scientists, engineers, and the general public. It is the purpose of this chapter to strengthen and enhance this policy.

(Pub. L. 90-396, § 1, July 11, 1968, 82 Stat. 339.)

SHORT TITLE

Section 8 of Pub. L. 90-396 provided that: "This Act [enacting this chapter] may be cited as the 'Standard Reference Data Act'."

§ 290a. Definitions

For the purposes of this chapter—

(a) The term "standard reference data" means quantitative information, related to a measurable physical or chemical property of a substance or system of substances of known composition and structure, which is critically evaluated as to its reliability under section 290b of this title.

(b) The term "Secretary" means the Secretary of Commerce.

(Pub. L. 90-396, § 2, July 11, 1968, 82 Stat. 340.)

§ 290b. Collection, compilation, critical evaluation, publication and dissemination of standard reference data

The Secretary is authorized and directed to provide or arrange for the collection, compilation, critical evaluation, publication, and dissemination of standard reference data. In carrying out this program, the Secretary shall, to the maximum extent practicable, utilize the reference data services and facilities of other agencies and instrumentalities of the Federal Government and of State and local governments, persons, firms, institutions, and associations, with their consent and in such a manner as to avoid duplication of those services and facilities. All agencies and instrumentalities of the Federal Government are encouraged to exercise their duties and functions in such manner as will assist in carrying out the purpose of this chapter. This section shall be deemed complementary to existing authority, and nothing herein is intended to repeal, supersede, or diminish existing authority or responsibility of any agency or instrumentality of the Federal Government.

(Pub. L. 90-396, § 3, July 11, 1968, 82 Stat. 340.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290a of this title.

§ 290c. Standards, criteria, and procedures for preparation and publication of standard reference data; publication in Federal Register

To provide for more effective integration and coordination of standard reference data activities, the Secretary, in consultation with other interested Federal agencies, shall prescribe and publish in the Federal Register such standards, criteria, and procedures for the preparation and publication of standard reference data as may be necessary to carry out the provisions of this chapter.

(Pub. L. 90-396, § 4, July 11, 1968, 82 Stat. 340.)

§ 290d. Sale of standard reference data; cost recovery; proceeds subject to Bureau of Standards

Standard reference data conforming to standards established by the Secretary may be made available and sold by the Secretary or by a person or agency designated by him. To the extent practicable and appropriate, the prices established for such data may reflect the cost of collection, compilation, evaluation, publication, and dissemination of the data, including administrative expenses; and the amounts received shall be subject to the Act of March 3, 1901, as amended [15 U.S.C. 271 et seq.].

(Pub. L. 90-396, § 5, July 11, 1968, 82 Stat. 340.)

REFERENCES IN TEXT

Act of March 3, 1901, as amended, referred to in text, means act Mar. 3, 1901, ch. 872, 31 Stat. 1449, which is classified generally to chapter 7 (§ 271 et seq.) of this title. For complete classification of this Act to the Code, see Tables volume.

§ 290e. United States copyright and renewal rights

(a) Notwithstanding the limitations contained in section 8 of title 17, the Secretary may secure copyright and renewal thereof on behalf of the United States as author or proprietor in all or any part of any standard reference data which he prepares or makes available under this chapter, and may authorize the reproduction and publication thereof by others.

(b) The publication or republication by the Government under this chapter, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgment or annulment of the copyright or to authorize any use or appropriation of such material without the consent of the copyright proprietor.

(Pub. L. 90-396, § 6, July 11, 1968, 82 Stat. 340.)

AMENDMENT TO SUBSEC. (a)

Pub. L. 94-533, §§ 102, 105(f), Oct. 19, 1976, 90 Stat. 2598, 2599, provided that effective Jan. 1, 1978, subsec. (a) is amended to read as follows:

"(a) Notwithstanding the limitations contained in section 105 of title 17, the Secretary may secure copyright and renewal thereof on behalf of the United States as author or proprietor in all or any part of any standard reference data which he prepares or makes available under this chapter, and may authorize the reproduction and publication thereof by others."

§ 290f. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter, $1.86 million for the fiscal year ending June 30, 1969. Notwithstanding the provisions of any other law, no appropriations for any fiscal year may be made for the purpose of this chapter after fiscal year 1969 unless previously authorized by legislation hereafter enacted by the Congress.

(Pub. L. 90-396, § 7, July 11, 1968, 82 Stat. 340.)

CHAPTER 8—FALSELY STAMPED GOLD OR SILVER OR GOODS MANUFACTURED THEREFROM

Sec.

291. Stamping with words "United States assay", etc., unlawful.
292. Forfeiture.
293. Penalty for infraction.
294. Importation or transportation of falsely marked gold or silver ware prohibited.
295. Standard of fineness of gold articles; deviation.
296. Standard of fineness of silver articles; deviation.
297. Stamping plated articles; words "sterling" or "coin" forbidden; quality marks or stamps; identifying trademark.
298. Violations of law.
    (a) Criminal prosecutions; penalties; jurisdiction.
    (b) Suits by competitors, customers, or subsequent purchasers for injunctive relief; damages and costs.
    (c) Suits by jewelry trade associations for injunctive relief; damages and costs.
    (d) Award of costs to defendant.
    (e) Jurisdiction of civil actions.
299. Definitions.
300. Application of State laws.

§ 291. Stamping with words "United States assay", etc., unlawful

It shall be unlawful for any person, partnership, association, or corporation engaged in commerce among the several States, Territories, District of Columbia, and possessions of the United States, or with any foreign country, to stamp any gold, silver, or goods manufactured therefrom, and which are intended and used in such commerce, with the words "United States assay", or with any words, phrases, or devices calculated to convey the impression that the United States Government has certified to the fineness or quality of such gold or silver, or of the gold or silver contained in any of the goods manufactured therefrom. Each and every such stamp shall constitute a separate offense.

(Feb. 21, 1905, ch. 720, § 1, 33 Stat. 732.)

CROSS REFERENCES

Forfeiture, see section 292 of this title.

Penalty for violating provisions of this section, see section 293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 292, 293 of this title.

§ 292. Forfeiture

Any gold, silver, or goods manufactured therefrom after February 21, 1905, bearing any of the stamps, words, phrases, or devices prohibited to be used under section 291 of this title, and being in the course of transportation from one State to another, or to or from a Territory, the District of Columbia, or possessions of the United States, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

(Feb. 21, 1905, ch. 720, § 3, 33 Stat. 732.)

CROSS REFERENCES

Penalty for violating the provisions of this section, see section 293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 293 of this title.

§ 293. Penalty for infraction

Every person, partnership, association, or corporation violating the provisions of sections 291 to 293 of this title, and every officer, director, or managing agent of such partnership, association, or corporation having knowledge of such violation and directly participating in such violation or consenting thereto, shall be deemed guilty of a misdemeanor, and, upon conviction, be punished with a fine of not more than $5,000 or imprisonment for not more than one year, or both, at the discretion of the court.

(Feb. 21, 1905, ch. 720, § 2, 33 Stat. 732.)

CROSS REFERENCES

Misdemeanor, offense punishable by imprisonment not exceeding one year as, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 294. Importation or transportation of falsely marked gold or silver ware prohibited

It shall be unlawful for any person, firm, corporation, or association, being a manufacturer of or wholesale or retail dealer in gold or silver jewelry or gold ware, silver goods or silverware, or for any officer, manager, director, or agent of such firm, corporation, or association to import or export or cause to be imported into or exported from the United States for the purpose of selling or disposing of the same, or to deposit or cause to be deposited in the United States mails for transmission thereby, or to deliver or cause to be delivered to any common carrier for transportation from one State, Territory, or possession of the United States, or the District of Columbia, to any other State, Territory, or possession of the United States, or to said District, in interstate commerce, or to transport or cause to be transported from one State, Territory, or possession of the United States, or from the District of Columbia, to any other State, Territory, or possession of the United States, or to said District, in interstate commerce, any article of merchandise manufactured after June 13, 1907, and made in whole or in part of gold or silver, or any alloy of either of said metals, and having stamped, branded, engraved, or printed thereon, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which said article is incased or inclosed, any mark or word indicating or designed or intended to indicate that the gold or silver or alloy of either of said metals in such article is of a greater degree of fineness than the actual fineness or quality of such gold, silver, or alloy, according to the standards and subject to the qualifications set forth in sections 295 and 296 of this title.

(June 13, 1906, ch. 3289, § 1, 34 Stat. 260.)

SHORT TITLE

Act June 13, 1906, ch 3289, which is classified to sections 294 to 300 of this title, is commonly known as the "Jewelers' Liability Act (Gold and Silver Articles)".

Pub. L. 94-450, § 1, Oct. 1, 1976, 90 Stat. 1501, provided: "That this Act [amending section 295 of this title and enacting provisions set out as a note under section 295 of this title] may be cited as the 'Gold Labeling Act of 1976'."

CROSS REFERENCES

Article of merchandise defined, see section 299 of this title.

Penalty for violating provisions of this section, see section 298 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 295, 296, 297, 298, 299, 300 of this title.

§ 295. Standard of fineness of gold articles; deviation

In the case of articles of merchandise made in whole or in part of gold or of any of its alloys so imported into or exported from the United States, or so deposited in the United States mails for transmission, or so delivered for transportation to any common carrier, or so transported or caused to be transported as specified in section 294 of this title, the actual fineness of such gold or alloy shall not be less by more than one-half of one carat than the fineness indicated by the mark stamped, branded, engraved, or printed upon any part of such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed; except that in the case of watchcases and flatware, so made of gold or of any of its alloys, the actual fineness of such gold or alloy shall not be less by more than three one-thousandth parts than the fineness indicated by the mark stamped, branded, engraved, or printed upon such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed: *Provided,* That in any test for the ascertainment of the fineness of any article mentioned in this section, according to the foregoing standards, the part of the article taken for the test, analysis, or assay shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of said article: *Provided further,* That in the case of any article mentioned in this section, in addition to the foregoing tests and standards, the actual fineness of the entire quantity of gold or of its alloys contained in such article, including all solder and alloy of inferior fineness used for brazing or uniting the parts of such article (all such gold, alloys, and solder being assayed as one piece), shall not be less by more than one carat than the fineness indicated by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed, it being intended that the standards of fineness and the tests or methods for ascertaining the same provided in this section for articles mentioned therein shall be concurrent and not alternative.

(June 13, 1906, ch. 3289, § 2, 34 Stat. 260.)

AMENDMENT OF SECTION EFFECTIVE OCTOBER 1, 1981

Pub. L. 94-450, § 2, Oct. 1, 1976, 90 Stat. 1501, amended this section, effective October 1, 1981, to read as follows:

"In the case of articles of merchandise made in whole or in part of gold or of any of its alloys so imported into or exported from the United States, or so deposited in the United States mails for transmission, or so delivered for transportation to any common carrier, or so transported or caused to be transported as specified in section 294 of this title, the actual fineness of such gold or alloy shall not be less by more than three one-thousandth parts than the fineness indicated by the mark stamped, branded, engraved, or printed upon any part of such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed: Provided, That in any test for the ascertainment of the fineness of any article mentioned in this section, according to the foregoing standards, the part of the article taken for the test, analysis, or assay shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of said article: Provided further, That, in addition to the foregoing tests and standards, the actual fineness of the entire quantity of gold or of its alloys contained in an article mentioned in this section, including all solder and alloy of inferior fineness used for brazing or uniting the parts of such article (all such gold, alloys, and solder being assayed as one piece), shall not be less by more than three one-thousandth parts, in the case of a watchcase or flatware, or than seven one-thousandth parts, in the case of any other such article, than the fineness indicated by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed, it being intended that the standards of fineness and the tests or methods for ascertaining the same provided in this section for articles mentioned therein shall be concurrent and not alternative."

AMENDMENTS

1976—Pub. L. 94-450 substituted "three one-thousandth parts" for "one-half of one carat", "in an article mentioned in this section" for "in such article", "than three one-thousandth parts, in the case of a watchcase or flatware, or than seven one-thousandth parts, in the case of any other such article," for "than one carat", struck out "in the case of any article mentioned in this section" which followed "*Provided, further,* That", and the exception which permitted the actual fineness of gold or its alloys used for watchcases and flatware to be not less by more than three one-thousandth parts the fineness indicated by stamp or label.

EFFECTIVE DATE OF 1976 AMENDMENT.

Section 3 of Pub. L. 94-450 provided that: "The amendments made by section 2 of this Act [amending this section] shall take effect five years after the date of enactment of this Act [Oct. 1, 1976] and shall not apply with respect to any article of merchandise which is sold by any manufacturer or importer before the effective date of such amendments."

CROSS REFERENCES

Article of merchandise defined, see section 299 of this title.

Penalty for violating provisions of this section, see section 298 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 294, 298, 299, 300 of this title.

§ 296. Standard of fineness of silver articles; deviation

In the case of articles of merchandise made in whole or in part of silver or any of its alloys so imported into or exported from the United States, or so deposited in the United States mails for transmission, or so delivered for transportation to any common carrier, or so transported or caused to be transported as specified in section 294 of this title, the actual fineness of the silver or alloy thereof of which such article is wholly or partly composed shall not be less by more than four one-thousandth parts than the actual fineness indicated by any mark (other than the word "sterling" or the word "coin") stamped, branded, engraved, or printed upon any part of such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed; and that no such article or tag, card, or label attached thereto, or box, package, cover, or wrapper in which such article is incased or inclosed shall be marked, stamped, branded, engraved, or printed with the word "sterling" or "sterling silver" or any colorable imitation thereof, unless such article or parts thereof purporting to be silver contains nine hundred and twenty-five one-thousandth parts pure silver; and that no such article, tag, card, label, box, package, cover, or wrapper shall be marked, stamped, branded, engraved, or printed with the words "coin" or "coin silver" or colorable imitation thereof unless such article or parts thereof purporting to be silver contains nine hundred one-thousandth parts pure silver: *Provided,* That in the case of all such articles whose fineness is indicated by the word "sterling" or the word "coin" there shall be allowed a divergence in the fineness of four one-thousandth parts from the foregoing standards: *Provided,* That in any test for the ascertainment of the fineness of any such article mentioned in this section according to the foregoing standards the part of the article taken for the test, analysis, or assay shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of such article: *Provided further,* That in the case of any article mentioned in this section, in addition to the foregoing tests and standards, the actual fineness of the entire quantity of silver or of its alloys contained in such article, including all solder and alloy of inferior fineness used for brazing or uniting the parts of such article (all such silver, alloys, and solder being assayed as one piece), shall not be less by more than ten one-thousandth parts than the fineness indicated by the mark stamped, branded, engraved, or imprinted upon such article, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which such article is incased or inclosed, it being intended that the standards of fineness and the tests or methods for ascertaining the same provided in this section for articles mentioned therein shall be concurrent and not alternative.

(June 13, 1906, ch. 3289, § 3, 34 Stat. 261.)

CROSS REFERENCES

Article of merchandise defined, see section 299 of this title.

Penalty for violating provisions of this section, see section 298 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 294, 298, 299, 300 of this title.

§ 297. Stamping plated articles; words "sterling" or "coin" forbidden; quality marks or stamps; identifying trademark

(a) In the case of articles of merchandise made in whole or in part of an inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto a plating, covering, or sheet composed of gold or silver, or of an alloy of either of said metals, and known in the market as rolled gold plate, gold plate, gold filled, silver plate, or gold or silver electroplate, or by any similar designation, so imported into or exported from the United States, or so deposited in the United States mails for transmission, or so delivered to any common carrier, or so transported or caused to be transported as specified in section 294 of this title, no such article, nor any tag, card, or label attached thereto, nor any box, package, cover, or wrapper in which such article is encased or inclosed, shall be stamped, branded, engraved, or imprinted with any word or mark usually employed to indicate the fineness of gold, unless such word or mark be accompanied by other words, plainly indicating that such article or part thereof is made of rolled gold plate, gold plate, or gold electroplate, or is gold filled, as the case may be, and no such article, nor any tag, card, or label attached thereto, nor any box, package, cover, or wrapper in which such article is incased or inclosed, shall be stamped, branded, engraved, or imprinted with the word "sterling" or the word "coin", either alone or in conjunction with other words or marks.

(b) Whenever any person, firm, corporation, or association, being a manufacturer or dealer subject to section 294 of this title—

(1) applies or causes to be applied to any article of merchandise intended for sale or customarily sold as a complete product to consumers in any State, by stamping, branding, engraving, or otherwise, any quality mark or stamp indicating or purporting to indicate that such article is made in whole or in part of gold or silver or of an alloy of either such metal; or

(2) imports into any State any such article of merchandise bearing any such quality mark or stamp which indicates or purports to indicate that such article is made in whole or in part of gold or silver or of an alloy of either such metal,

such person, firm, corporation, or association, before depositing any such article manufactured or imported after six months after the effective date of this Act in the United States mails, or causing such article to be so deposited, for transmission thereby, or delivering such article or causing such article to be delivered to any common carrier for transportation from one State to any other State, or transporting such article or causing such article to be transported from one State to any other State, shall—

(A) Apply or cause to be applied to that article a trademark of such persons, which has been duly registered or applied for registration under the laws of the United States within thirty days after an article bearing the trademark is placed in commerce or imported into the United States, or the name of such person; and

(B) if such article of merchandise is composed of two or more parts which are complete in themselves but which are not identical in quality, and any one of such parts bears such a quality mark or stamp, apply or cause to be applied to each other part of that article of merchandise a quality mark or stamp of like pattern and size disclosing the quality of that other part.

Each identifying trademark or name applied to any article of merchandise in compliance with clause (A) of this subsection shall be applied to that article by the same means as that used in applying the quality mark or stamp appearing thereon, in type or lettering at least as large as that used in such quality mark or stamp, and in a position as close as possible to that quality mark or stamp. For the purposes of this subsection, the term "State" includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the District of Columbia.

(June 13, 1906, ch. 3289, § 4, 34 Stat. 261; Oct. 4, 1961, Pub. L. 87-354, § 1, 75 Stat. 775; July 31, 1970, Pub. L. 91-366, § 1(e), 84 Stat. 691.)

REFERENCES IN TEXT

The effective date of this Act, referred to in subsec. (b), as the first day of the third month beginning after Oct. 4, 1961, see Effective Date of 1961 Amendment note under this section.

AMENDMENTS

1970—Subsec. (b). Pub. L. 91-366 struck out reference to the trademark of a firm, corporation or association in cl. (A).

1961—Pub. L. 87-354 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1970 AMENDMENT

Section 4 of Pub. L. 91-366 provided that: "This Act [amending this section and sections 298 and 299 of this title and enacting provisions set out as notes under this section] shall take effect three months after enactment [July 31, 1970]."

EFFECTIVE DATE OF 1961 AMENDMENT

Section 2 of Pub. L. 87-354 provided that: "The amendments made by this Act [to this section] shall take effect on the first day of the third month beginning after the date of enactment of this Act [Oct. 4, 1961]."

SEPARABILITY OF PROVISIONS

Section 2 of Pub. L. 91-366 provided that: "If any provision of this Act [amending this section and sections 298 and 299 of this title and enacting provisions set out as notes under this section] or any amendment made thereby, or the application thereof to any person, as that term is herein defined, is held invalid, the remainder of the Act or amendment and the application of the remaining provisions of the Act or amendment to any person shall not be affected thereby."

CONSTRUCTION OF 1970 AMENDMENT

Section 3 of Pub. L. 91-366 provided that: "The provisions of this Act [amending this section and sections 298 and 299 of this title and enacting provisions set out as notes under this section] and amendments made thereby shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of the United States."

CROSS REFERENCES

Article of merchandise defined, see section 299 of this title.

Penalty for violating provisions of this section, see section 298 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 298, 299, 300 of this title.

§ 298. Violations of law

(a) Criminal prosecutions; penalties; jurisdiction

Each and every person, firm, corporation, or association, being a manufacturer of or a wholesale or retail dealer in gold or silver jewelry, gold ware, silver goods, or silverware, who or which shall knowingly violate any of the provisions of sections 294 to 300 of this title, and every officer, manager, director, or managing agent of any such corporation or association having knowledge of such violation and directly participating in such violation or consenting thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of the United States having jurisdiction of crimes within the district in which such violation was committed or through which has been conducted the transportation of the article in respect to which such violation has been committed, shall be punished by a fine of not more than $500 or imprisonment for not more than three months, or both, at the discretion of the court. Whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

(b) Suits by competitors, customers, or subsequent purchasers for injunctive relief; damages and costs

Any competitor, customer, or competitor of a customer of any person in violation of section 294, 295, 296, or 297 of this title, or any subsequent purchaser of an article of merchandise which has been the subject of a violation of section 294, 295, 296, or 297 of this title, shall be entitled to injunctive relief restraining further violation of sections 294 to 300 of this title and may sue therefor in any district court of the United States in the district in which the defendant resides or has an agent, without respect to the amount in controversy, and shall recover damages and the cost of suit, including a reasonable attorney's fee.

(c) Suits by jewelry trade associations for injunctive relief; damages and costs

Any duly organized and existing jewelry trade association shall be entitled to injunctive relief restraining any person in violation of section 294, 295, 296, or 297 of this title from further violation of sections 294 to 300 of this title and may sue therefor as the real party in interest in any district court of the United States in the district in which the defendant resides or has an agent, without respect to the amount in controversy, and if successful shall recover the cost of suit, including a reasonable attorney's fee. If the court determines that the action has been brought frivolously, for purposes of harassment, or in implementation of any scheme in restraint of trade, it may award punitive damages to the defendant.

(d) Award of costs to defendant

Any defendant against whom a civil action is brought under the provisions of sections 294 to 300 of this title shall be entitled to recover the cost of defending the suit, including a reasonable attorney's fee, in the event such action is terminated without a finding by the court that such defendant is or has been in violation of sections 294 to 300 of this title.

(e) Jurisdiction of civil actions

The district courts shall have exclusive original jurisdiction of any civil action arising under the provisions of sections 294 to 300 of this title.

(June 13, 1906, ch. 3289, § 5, 34 Stat. 262; July 31, 1970, Pub. L. 91-366, § 1(a), (b), 84 Stat. 690.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-366, § 1(a), designated existing provisions as subsec. (a).

Subsecs. (b) to (e). Pub. L. 91-366, § 1(b), added subsecs. (b) to (e).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-366 effective three months after July 31, 1970, see section 4 of Pub. L. 91-366, set out as a note under section 297 of this title.

SEPARABILITY OF PROVISIONS

For separability of provisions of Pub. L. 91-366, see Separability of Provisions note set out under section 297 of this title.

CONSTRUCTION OF 1970 AMENDMENT

Amendment by Pub. L. 91-366 to be held to be in addition to and not in substitution for or limitation of the provisions of any other Act of the United States, see section 3 of Pub. L. 91-366, set out as a note under section 297 of this title.

CROSS REFERENCES

Jurisdiction of district courts of the United States of all offenses against the laws of the United States, see section 3231 of Title 18, Crimes and Criminal Procedure.

Misdemeanor, offense punishable by imprisonment not exceeding one year as, see section 1 of Title 18.

Offenses begun in one district and completed in another, see section 3237 of Title 18.

FEDERAL RULES OF CRIMINAL PROCEDURE

Continuation of section under rule 18, see note by Advisory Committee under rule 18, Title 18, Appendix, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 299, 300 of this title.

§ 299. Definitions

(a) The expression "article of merchandise" as used in sections 294 to 300 of this title shall signify any goods, wares, works of art, commodity, or other thing which may be lawfully kept or offered for sale.

(b) The term "person" means an individual, partnership, corporation, or any other form of business enterprise, capable of being in violation of sections 294 to 300 of this title.

(c) The term "jewelry trade association" means an organization, consisting primarily of persons actively engaged in the jewelry or a related business, the purposes and activities of which are primarily directed to the improvement of business conditions in the jewelry or related businesses.

(June 13, 1906, ch. 3289, § 6, 34 Stat. 262; July 31, 1970, Pub. L. 91-366, § 1(c), (d), 84 Stat. 690.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-366, § 1(c), designated existing provisions as subsec. (a).

Subsecs. (b), (c). Pub. L. 91-366, § 1(d), added subsecs. (b) and (c).

EFFECTIVE DATE OF 1970 AMENDMENTS

Amendment by Pub. L. 91-366 effective three months after July 31, 1970, see section 4 of Pub. L. 91-366, set out as a note under section 297 of this title.

SEPARABILITY OF PROVISIONS

For separability of provisions of Pub. L. 91-366, see Separability of Provisions note set out under section 297 of this title.

CONSTRUCTION OF 1970 AMENDMENT

Amendment by Pub. L. 91-366 to be held to be in addition to and not in substitution for or limitation of the provisions of any other Act of the United States, see section 3 of Pub. L. 91-366, set out as a note under section 297 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 298, 300 of this title.

§ 300. Application of State laws

All articles of merchandise to which sections 294 to 300 of this title apply which shall have been transported into any State, Territory, District, or possession of the United States, and shall remain therein for use, sale, or storage, shall, upon arrival in such State, Territory, District, or possession, be subject to the operation of all the laws of such State, Territory, District, or possession of the United States to the same extent and in the same manner as though such articles of merchandise had been produced in such State, Territory, District, or possession, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

(June 13, 1906, ch. 3289, § 7, 34 Stat. 262.)

CROSS REFERENCES

Article of merchandise defined, see section 299 of this title.

Penalty for violating provisions of this section, see section 298 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 298, 299 of this title.

CHAPTER 9—THE NATIONAL WEATHER SERVICE

Sec.

311. Omitted.
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328. Transfer from other Government Departments of surplus equipment and supplies for Arctic stations.
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§ 311. Omitted

CODIFICATION

Section, act Oct. 1, 1890, ch. 1266, § 1, 26 Stat. 653, as amended, relating to the establishment of a Weather Bureau in the Department of Commerce, was omitted because the Weather Bureau was consolidated with the Coast and Geodetic Survey to form a new agency in the Department to be known as the Environmental Science Services Administration, and the office of Chief of the Weather Bureau was abolished, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under this section. The Reorg. Plan also transferred to the Secretary of Commerce all functions of the Bureau and the Chief of the Bureau.

Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees, abolished the Environmental Science Services Administration, including the offices of Administrator and Deputy Administrator, and established the National Oceanic and Atmospheric Administration within the Department of Commerce. By Department Organization Order 25-5A, republished 39 F.R. 27486, July 29, 1974, the Secretary of Commerce delegated to the National Oceanic and Atmospheric Administration a number of functions vested in him, including his functions under this chapter of the Code. By order of the Acting Associate Administrator, 35 F.R. 19249, Dec. 19, 1970, the following organizational names appearing in chapter IX of subtitle B of Title 15, Code of Federal Regulations, relating to the Administration, were changed: Environmental Science Services Administration to National Oceanic and Atmospheric Administration (ESSA to NOAA); Coast and Geodetic Survey to National Ocean Survey, and Weather Bureau to National Weather Service.

Prior to Oct. 1, 1890, the functions of the Weather Bureau were exercised by the Signal Corps of the Army. Act October 1, 1890, created the present Bureau in the Department of Agriculture. By Reorg. Plan No. IV of 1940, § 8, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1236, the Bureau and its functions were transferred to the Department of Commerce, "*Provided*, That the Department of Agriculture may continue to make snow surveys and to conduct research concerning: (a) relationships between weather and crops, (b) long-range weather forecasting, and (c) relationships between weather and soil erosion."

WEATHER MODIFICATION PROGRAM

Act Aug. 13, 1953, ch. 426, 67 Stat. 559, as amended by act July 9, 1956, ch. 522, 70 Stat. 509, related to research and experimentation in the field of weather modification and created the Advisory Committee on Weather Control. Pub. L. 85-170, ch. II, § 201, Aug. 28, 1957, 71 Stat. 427, provided in part that the Advisory Committee on Weather Control shall complete its report and terminate its activities by Dec. 31, 1957.

REORGANIZATION PLAN NO. 2 OF 1965

Eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 13, 1965, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see section 901 et seq. of Title 5, Government Organization and Employees].

ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION, DEPARTMENT OF COMMERCE

SECTION 1. TRANSFER OF FUNCTIONS

All functions vested by law in the Weather Bureau, the Chief of the Weather Bureau, the Coast and Geodetic Survey, the Director of the Coast and Geodetic Survey, and any officer, employee, or organizational entity of that Bureau or Survey, and not heretofore transferred to the Secretary of Commerce, hereinafter referred to as the Secretary, are hereby transfered to the Secretary.

SEC. 2. ABOLITIONS

(a) The offices of Director of the Coast and Geodetic Survey, Deputy Director of the Coast and Geodetic Survey, and Chief of the Weather Bureau are hereby abolished. The Secretary shall make such provisions as he shall deem to be necessary respecting the winding up of any outstanding affairs of the officers whose offices are abolished by the provisions of this section.

(b) The abolitions effected by the provision of subsection (a) of this section shall exclude the abolition of rights to which the present incumbents of the abolished offices would be entitled under law upon the termination of their appointments.

SEC. 3. ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION

(a) The Coast and Geodetic Survey and the Weather Bureau are hereby consolidated to form a new agency in the Department of Commerce which shall be known as the Environmental Science Services Administration, hereinafter referred to as the Administration.

(b) The Secretary shall from time to time establish such constitutent organizational entities of the Administration, with such names, as he shall determine.

SEC. 4. OFFICERS OF THE ADMINISTRATION

(a) There shall be at the head of the Administration the Administrator of the Environmental Science Services Administration, hereinafter referred to as the Administrator. The Administrator shall be appointed by the President by and with the advice and consent of the Senate. He shall perform such functions as the Secretary may from time to time direct.

(b)(1) There shall be in the Administration a Deputy Administrator of the Environmental Science Services Administration, hereinafter referred to as the Deputy Administrator, who shall be appointed by the President by and with the advice and consent of the Senate, shall perform such functions as the Secretary may from time to time direct, and, unless he is compensated in pursuance of the provisions of paragraph (2), below, shall receive compensation in accordance with the Classification Act of 1949, as amended [chapter 51 and subchapter III of chapter 53 of Title 5].

(2) The office of Deputy Administrator may be filled at the discretion of the President by appointment (by and with the advice and consent of the Senate) from the active list of commissioned officers of the Administration in which case the appointment shall create a vacancy on the active list and while holding the office of Deputy Administrator the officer shall have rank, pay and allowances not exceeding those of a Vice Admiral.

(c) The Deputy Administrator or such other official of the Department of Commerce as the Secretary shall from time to time designate shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) At any one time, one principal constituent organizational entity of the Administration may, if the Secretary so elects, be headed by a commissioned officer of the Administration, who shall be designated by the Secretary. Such designation of an officer shall create a vacancy on the active list and while serving under this paragraph the officer shall have rank, pay and allowances not exceeding those of a Rear Admiral (upper half).

(e) Any commissioned officer of the Administration who has served as Deputy Administrator or has served in a rank above that of Captain as the head of a principal constituent organizational entity of the Administration, and is retired while so serving or is retired after the completion of such service while serving in a lower rank or grade, shall be retired with the rank, pay and allowances authorized by law for the highest grade and rank held by him; but any such officer, upon termination of his appointment in a rank above that of Captain shall, unless appointed or assigned to some other position for which a higher rank or grade is provided, revert to the grade and number he would have occupied had he not served in a rank above that of Captain and such officer shall be an extra number in that grade. [As amended Pub. L. 90-83 § 10(c), Sept. 11, 1967, 81 Stat. 224.]

SEC. 5. AUTHORITY OF THE SECRETARY

Nothing in this reorganization plan shall divest the Secretary of any function vested in him by law or by Reorganization Plan No. 5 of 1950 (64 Stat. 1263) or in any manner derogate from any authority of the Secretary thereunder.

SEC. 6. PERSONNEL, PROPERTY, RECORDS AND FUNDS

(a) The personnel (including commissioned officers) employed in the Coast and Geodetic Survey, the personnel employed in the Weather Bureau, and the property and records held or used by the Weather Bureau or the Coast and Geodetic Survey shall be deemed to be transferred to the Administration.

(b) Unexpended balances of appropriations, allocations, and other funds available or to be made available in connection with functions now administered by the Weather Bureau or by the Coast and Geodetic Survey shall be available to the Administration hereunder in connection with those functions.

(c) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the foregoing provisions of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 7. INTERIM OFFICERS

(a) The President may authorize any person who immediately prior to the effective date of this reorganization plan held a position in the executive branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to the provision of this reorganization plan or by recess appointment, as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator.

(c) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect to which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 2 of 1965, prepared in accordance with the provisions of the Reorganization Act of 1949, as amended, and providing for the reorganization of two major agencies of the Department of Commerce: The Weather Bureau and the Coast and Geodetic Survey.

The reorganization plan consolidates the Coast and Geodetic Survey and the Weather Bureau to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration. It is the intention of the Secretary of Commerce to transfer the Central Radio Propagation Laboratory of the National Bureau of Standards to the Administration when the reorganization plan takes effect. The new Administration will then provide a single national focus for our efforts to describe, understand, and predict the state of the oceans, the state of the lower and upper atmosphere, and the size and shape of the earth.

Establishment of the Administration will mark a significant step forward in the continual search by the Federal Government for better ways to meet the needs of the Nation for environmental science services. The organizational improvements made possible by the reorganization plan will enhance our ability to develop an adequate warning system for the severe hazards of nature—for hurricanes, tornadoes, floods, earthquakes, and seismic sea waves, which have proved so disastrous to the Nation in recent years. These improvements will permit us to provide better environmental information to vital segments of the Nation's economy—to agriculture, transportation, communications, and industry, which continually require information about the physical environment. They will mean better services to other Federal departments and agencies—to those that are concerned with the national defense, the exploration of outer space, the management of our mineral and water resources, the protection of the public health against environmental pollution, and the preservation of our wilderness and recreation areas.

The new Administration will bring together a number of allied scientific disciplines that are concerned with the physical environment. This integration will better enable us to look at man's physical environment as a scientific whole and to seek to understand the interactions among air, sea, and earth and between the upper and lower atmosphere. It will facilitate the development of programs dealing with the physical environment and will permit better management of these programs. It will enhance our capability to identify and solve important long-range scientific and technological problems associated with the physical environment. The new Administration will, in consequence, promote a fresh sense of scientific dedication, discovery, and challenge, which are essential if we are to attract scientists and engineers of creativity and talent to Federal employment in this field.

The reorganization plan provides for an Administrator at the head of the Administration, and for a Deputy Administrator, each of whom will be appointed by the President by and with the advice and consent of the Senate. As authorized by the civil service and other laws and regulations, subordinate officers of the Administration will be appointed by the Secretary of Commerce or be assigned by him from among a corps of commissioned officers. The Administration will perform such functions as the Secretary of Commerce may delegate or otherwise assign to it and will be under his direction and control.

Commissioned officers of the Coast and Geodetic Survey will become commissioned officers of the Administration and may serve at the discretion of the Secretary of Commerce throughout the Administration. The reorganization plan authorizes the President at his discretion to fill the Office of Deputy Administrator by appointment, by and with the advice and consent of the Senate, from the active list of commissioned officers of the Administration.

The reorganization plan transmitted herewith abolishes—and thus excludes from the consolidation mentioned above—the offices of (1) Chief of the Weather Bureau, provided for in the act of October 1, 1890 (15 U.S.C. 312); (2) Director of the Coast and Geodetic Survey, provided for in the acts of June 4, 1920, and February 16, 1929, as amended (33 U.S.C. 852, 852a); and (3) Deputy Director of the Coast and Geodetic Survey, provided for in the act of January 19, 1942, as amended (33 U.S.C. 852b).

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 2 of 1965 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended. I have also found and hereby declare that by reason of the reorganizations made by the reorganization plan, it is necessary to include in the plan provisions for the appointment and compensation of the officers of the Administration set forth in section 4 of the reorganization plan. The rate of compensation fixed for each of these officers is that which I have found to prevail in respect of comparable officers in the executive branch of the Government.

In addition to permitting more effective management within the Department of Commerce, the new organization will ultimately produce economies. These economies will be of two types. The first, and probably the most significant, is the savings and avoidance of costs which will result from the sharing of complex and expensive facilities such as satellites, computers, communication systems, aircraft, and ships. These economies will increase in significance as developments in science and technology bring into being still more advanced equipment. Second, integration of the existing headquarters and field organizations will permit more efficient utilization of existing administrative staffs and thereby produce future economies. It is, however, impracticable to specify or itemize at this time the reductions of expenditures which it is probable will be brought about by the taking effect of the reorganizations included in the reorganization plan.

I recommend that the Congress allow the accompanying reorganization plan to become effective.

THE WHITE HOUSE, May 13, 1965.

LYNDON B. JOHNSON.

§ 312. Employees

The National Weather Service shall consist of such civilian employees as Congress may annually provide for and as may be necessary to properly perform the duties devolving on said Service by law.

(Oct. 1, 1890, ch. 1266, § 4, 26 Stat. 653; July 8, 1898, No. 57, 30 Stat. 752; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

Repeals

Joint Res. July 8, 1898, provided: "That the laws authorizing the detail and assignment of the officers of the Army to duty in the Weather Bureau be, and are hereby repealed."

Transfer of Functions

The office of Chief of the Weather Bureau was abolished, and the Weather Bureau was consolidated with the Coast and Geodetic Survey to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. The Reorg. Plan also transferred to the Secretary of Commerce all functions of the Bureau and the Chief of the Bureau. Subsequently, the Environmental Science Services Administration was abolished, and the National Oceanic and Atmospheric Administration was established. By Department Organization Order 25-5A, the Secretary delegated to NOAA his functions under this chapter of the Code. By order of the Acting Associate Administrator of NOAA, the organizational name of the Weather Bureau was changed to the National Weather Service. For further details, see codification note under section 311 of this title.

§ 313. Duties of Secretary of Commerce

The Secretary of Commerce shall have charge of the forecasting of weather, the issue of storm warnings, the display of weather and flood signals for the benefit of agriculture, commerce, and navigation, the gauging and reporting of rivers, the maintenance and operation of seacoast telegraph lines and the collection and transmission of marine intelligence for the benefit of commerce and navigation, the reporting of temperature and rain-fall conditions for the cotton interests, the display of frost and cold-wave signals, the distribution of meteorological information in the interests of agriculture and commerce, and the taking of such meteorological observations as may be necessary to establish and record the climatic conditions of the United States, or as are essential for the proper execution of the foregoing duties.

(Oct. 1, 1890, ch. 1266, § 3, 26 Stat. 653; May 20, 1926, ch. 344, § 5 (e), 44 Stat. 571; June 23, 1938, ch. 601, title XI, § 1107(k), 52 Stat. 1029; 1940 Reorg. Plan No. IV, § 8, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1236; 1965 Reorg. Plan No. 2, §§ 1, 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318.)

Amendments

1938—Act June 23, 1938, repealed second paragraph relating to duties as to air navigation.

1926—Act May 20, 1926, added second paragraph relating to duties as to air navigation.

Repeals

Pub. L. 85-726, title XIV, § 1401(b), Aug. 23, 1958, 72 Stat. 806, repealed act June 23, 1938, ch. 601, title XI, § 1107(k), 52 Stat. 1029, cited to the credit of this section.

Transfer of Functions

The office of Chief of the Weather Bureau was abolished and his functions transferred to the Secretary of Commerce by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318. Reorg. Plan No. IV of 1940 transferred the Weather Bureau from the Department of Agriculture to the Department of Commerce. For further details, see notes under section 311 of this title.

Study of Thunderstorms and Atmospheric Disturbances; Reports; Expenditures; Cooperation of Other Departments

Act June 16, 1948, ch. 483, 62 Stat. 470, provided:

"That the Chief of the Weather Bureau is authorized and directed to study fully and thoroughly the internal structure of thunderstorms, hurricanes, cyclones, and other severe atmospheric disturbances, particularly the degree of turbulence within such storms and the development, maintenance, and magnitude of updrafts and downdrafts with a view to establishing methods by which the characteristics of particular thunderstorms may be forecast and methods by which the characteristics of such storms may be determined on visual observation from outside of the immediate thunderstorm area. Such study shall be concluded at the earliest practicable date and a final report submitted to Congress. The Chief of the Weather Bureau shall make interim reports to Congress at least annually during the course of the study.

"Sec. 2. The Chief of the Weather Bureau is empowered to make such expenditures at the seat of government and elsewhere as may be necessary to carry out the purposes of this Act and as from time to time may be appropriated for by Congress, including expenditures for the development and purchase of special meteorological instruments and other equipment (including motor vehicles and aircraft), without regard to the provisions of section 3709 of the Revised Statutes [section 5 of Title 41, Public Contracts]. There is hereby authorized to be appropriated such sums as are necessary for the purpose of carrying out the provisions of this Act.

"Sec. 3. Any executive department or independent establishment is hereby authorized to cooperate with the Chief of the Weather Bureau in carrying out the purposes of this Act, and for such purposes may lend or transfer to the Chief of the Weather Bureau any officer or employee of such department or establishment and any property, equipment, lands, or buildings under its control."

Cross References

Counterfeit weather forecasts, punishing the issue or publication of, see section 2074 of Title 18, Crimes and Criminal Procedure.

Flood control, current information to aid, see section 706 of Title 33, Navigation and Navigable Waters.

Printing and distribution of reports of Secretary of Agriculture and of the Weather Bureau, see sections 1301 and 1310 of Title 44, Public Printing and Documents.

§ 313a. Establishment of meteorological observation stations in the Arctic region

In order to improve the weather forecasting service of the United States and to promote safety and efficiency in civil air navigation to the highest possible degree, the Secretary of Commerce shall, in addition to his other functions and duties, take such action as may be necessary in the development of an international basic meteorological reporting network in the Arctic region of the Western Hemisphere, including the establishment, operation, and maintenance of such reporting stations in cooperation with the State Department and other United States governmental departments and agencies, with the meteorological services of foreign countries and with persons engaged in air commerce.

(Feb. 12, 1946, ch. 4, § 1, 60 Stat. 4; 1965 Reorg. Plan No. 2, §§ 1, 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318.)

Transfer of Functions

The office of Chief of the Weather Bureau was abolished and his functions transferred to the Secretary of Commerce by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318. For further details, see notes under section 311 of this title.

Appropriations

Section 2 of act Feb. 12, 1946, authorized the appropriation of the necessary funds to carry out the provisions of this section.

§ 314. Omitted

Codification

Section, act Aug. 8, 1894, ch. 238, 28 Stat. 273, related to making promotions in the service without prejudice to those transferred from the Signal Service of the War Department, and was omitted as obsolete because no one remains who was so transferred.

§ 315. Changes or assignment to duty

The Secretary of Commerce is authorized to make such changes or assignment to duty in the personnel or detailed force of the National Weather Service for limiting or reducing expenses as he may deem necessary.

(Mar. 2, 1895, ch. 169, 28 Stat. 737; 1940 Reorg. Plan No. IV, § 8, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1236; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

Transfer of Functions

The Weather Bureau was consolidated with the Coast and Geodetic Survey to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. All functions of the Bureau and the Chief of the Bureau were transferred to the Secretary of Commerce by the Reorg. Plan. Subsequently, the Environmental Science Services Administration was abolished, and the National Oceanic and Atmospheric Administration was established. By Department Organization Order 25-5A, the Secretary delegated to NOAA his functions under this chapter of the Code. By order of the Acting Associate Administrator of NOAA, the organizational name of the Weather Bureau was changed to the National Weather Service. For further details, see Codification note under section 311 of this title.

§ 316. Omitted

Codification

Section, act Mar. 4, 1913, ch. 145, 37 Stat. 830, related to travel expenses, and has been superseded by section 5701 et seq. of Title 5, Government Organization and Employees.

§ 317. Appropriations and estimates

The appropriations for the support of the National Weather Service shall be made with those of the other bureaus of the Department of Commerce, and it shall be the duty of the Secretary of Commerce to prepare future estimates for the National Weather Service which shall be specially developed and extended in the interests of agriculture.

(Oct. 1, 1890, ch. 1266, § 9, 26 Stat. 653; 1940 Reorg. Plan No. IV, § 8, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1236; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

Transfer of Functions

The Weather Bureau was consolidated with the Coast and Geodetic Survey to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration, by Reorg. Plan No. 2, of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. All functions of the Bureau and the Chief of the Bureau were transferred to the Secretary of Commerce by the Reorg. Plan. Subsequently, the Environmental Science Services Administration was abolished, and the National Oceanic and Atmospheric Administration was established. By Department Organization Order 25-5A, the Secretary delegated to NOAA his functions under this chapter of the Code. By order of the Acting Associate Administrator of NOAA, the organizational name of the Weather Bureau was changed to the National Weather Service. For further details, see codification note under section 311 of this title.

Reorg. Plan No. IV of 1940 transferred the Weather Bureau from the Department of Agriculture to the Department of Commerce.

§ 318. Weather signals on mail cars

The Secretary of Commerce, in cooperation with the Postmaster General, may arrange a plan by which there shall be displayed on all cars and other conveyances used for transporting United States mail suitable flags or other signals to indicate weather forecasts, cold-wave warnings, frost warnings, and so forth, to be furnished by the Secretary.

(Apr. 25, 1896, ch. 140, 29 Stat. 108; 1940 Reorg. Plan No. IV, § 8, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1236; 1965 Reorg. Plan No. 2, §§ 1, 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318.)

Transfer of Functions

The office of Chief of the Weather Bureau was abolished and his functions transferred to the Secretary of Commerce by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318. Reorg. Plan No. IV of 1940 transferred the Weather Bureau from the Department of Agriculture to the Department of Commerce. For further details, see notes under section 311 of this title.

§ 319. Omitted

Codification

Section, act June 3, 1948, ch. 400, title III, § 301, 62 Stat. 328, was from the Department of Commerce Appropriation Act, 1949, and has been omitted as not having been repeated in subsequent appropriations acts. Similar provisions were contained in prior appropriations acts back to 1925. Section related to printing by Weather Bureau and is covered by section 326 of this title.

§ 320. Repealed. Oct. 31, 1951, ch. 654, § 1 (34), 65 Stat. 702

Section, act Mar. 4, 1907, ch. 2907, 34 Stat. 1258, related to sale of maps or publications, and is now covered by sections 483, 484, and 485 of Title 40, Public Buildings, Property, and Works.

§ 321. Repealed. Oct. 25, 1951, ch. 562, § 1 (15), 65 Stat. 638

Section, act May 25, 1900, ch. 555, 31 Stat. 204, relating to destruction of old telegrams, is now covered by section 3301 et seq. of Title 44, Public Printing and Documents.

§ 322. Odd jobs for part-time employees

National Weather Service part-time employees, appointed by designation or otherwise under regulations of the Civil Service Commission for observational work, may perform odd jobs in the installation, repair, improvement, alteration, cleaning, or removal of Government property and receive compensation therefor under regulations to be prescribed by the Secretary of Commerce.

(July 1, 1943, ch. 182, title III, § 1, 57 Stat. 301; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

Transfer of Functions

The Weather Bureau was consolidated with the Coast and Geodetic Survey to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. All functions of the Bureau and the Chief of the Bureau were transferred to the Secretary of Commerce by the Reorg. Plan. Subsequently, the Environmental Science Services Administration was abolished, and the National Oceanic and Atmospheric Administration was established. By Department Organization Order 25-5A, the Secretary delegated to NOAA his functions under this chapter of the Code. By order of the Acting Associate Administrator of NOAA, the organizational name of the Weather Bureau was changed to the National Weather Service. For further details, see codification note under section 311 of this title.

Similar Provisions

Section is from the Departments of State, Justice, and Commerce Appropriation Act, 1944. Similar provisions were contained in the following appropriation acts:

July 2, 1942, ch. 472, title III, 56 Stat. 500.
June 28, 1941, ch. 258, title II, 55 Stat. 289.
June 25, 1940, ch. 421, § 1, 54 Stat. 539.
June 30, 1939, ch. 253, title I, 53 Stat. 947.
June 16, 1938, ch. 464, title I, 52 Stat. 718.
June 29, 1937, ch. 404, 50 Stat. 403.

§ 323. Repealed. July 25, 1947, ch. 327, § 1, 61 Stat. 449

Section, act Oct. 29, 1942, ch. 632, 56 Stat. 1012, related to scholarships for meteorological students in weather forecasting during World War II.

§ 324. Omitted

Codification

Section, act June 3, 1948, ch. 400, title III, § 301, 62 Stat. 328, was from the Department of Commerce Appropriation Act, 1949, and has been omitted as not having been repeated in subsequent appropriations acts. Similar provisions were contained in prior appropriations acts back to 1943. Section related to extra compensation for certain employees in Alaska and other territorial possessions, and is covered by section 327 of this title and notes thereunder.

§ 325. Authority for certain functions and activities

Appropriations now or hereafter provided for the National Weather Service shall be available for (a) furnishing food and shelter, without repayment therefor, to employees of the Government assigned to Arctic stations; (b) equipment and maintenance of meteorological offices and stations, and maintenance and operation of meteorological facilities outside the United States by contract or otherwise; (c) repairing, altering, and improving of buildings occupied by the National Weather Service, and care and preservation of grounds, including the construction of necessary outbuildings and sidewalks on public streets abutting National Weather Service grounds; (d) arranging for communication services at rates to be fixed by the Secretary of Commerce by agreement with the companies performing the services when determined to be advantageous to the Government; and (e) purchasing tabulating cards and continuous form tabulating paper.

(June 2, 1948, ch. 373, § 1, 62 Stat. 286; 1965 Reorg. Plan No. 2, 1970 eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

Transfer of Functions

The Weather Bureau was consolidated with the Coast and Geodetic Survey to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. All functions of the Bureau and the Chief of the Bureau were transferred to the Secretary of Commerce by the Reorg. Plan. Subsequently, the Environmental Science Services Administration was abolished, and the National Oceanic and Atmospheric Administration was established. By Department Organization Order 25-5A, the Secretary delegated to NOAA his functions under this chapter of the Code. By order of the Acting Associate Administrator of NOAA, the organizational name of the Weather Bureau was changed to the National Weather Service. For further details, see codification note under section 311 of this title.

§ 326. Maintenance of printing office in Washington, D.C.

When so specified in appropriation Acts, the National Weather Service is authorized to maintain a printing office in the city of Washington for the printing of weather maps, bulletins, circulars, forms, and other publications: *Provided,* That no printing shall be done by the National Weather Service which could be done at the Government Printing Office without impairing the service of said Service.

(June 2, 1948, ch. 373, § 2, 62 Stat. 286; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

Transfer of Functions

The Weather Bureau was consolidated with the Coast and Geodetic Survey to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. All functions of the Bureau and the Chief of the Bureau were transferred to the Secretary of Commerce by the Reorg. Plan. Subsequently, the Environmental Science Services Administration was abolished, and the National Oceanic and Atmospheric Administration was established. By Department Organization Order 25-5A, the Secretary delegated to NOAA his functions under this chapter of the Code. By order of the Acting Associate Administrator of NOAA, the organizational name of the Weather Bureau was changed to the National Weather Service. For further details, see codification note under section 311 of this title.

§ 327. Employees for conduct of meteorological investigations in Arctic region; appointment and compensation; extra compensation to other Government employees for taking observations

The Secretary of Commerce is authorized to (a) appoint employees for the conduct of meteorological investigations in the Arctic region without regard to the civil service laws and fix their compensation without regard to chapter 51 and subchapter III of chapter 53 of title 5, and sections 5542, 5543, 5545, and 5546 of title 5, at base rates not to exceed the maximum scheduled rate for GS-12, and (b) grant extra compensation to employees of other Government agencies for taking and transmitting meteorological observations without regard to section 5533 of title 5.

(June 2, 1948, ch. 373, § 3, 62 Stat. 286; Mar. 28, 1960, Pub. L. 86-397, § 2, 74 Stat. 11; Aug. 19, 1964, Pub. L. 88-448, title IV, § 401(m), 78 Stat. 491.)

REFERENCES IN TEXT

The civil service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

CODIFICATION

In this section, "chapter 51 and subchapter III of chapter 53 of title 5", "sections 5542, 5543, 5545, and 5546 of title 5", and "section 5533 of title 5" were substituted for "the Classification Act of 1949, as amended (5 U.S.C. 1071 and the following)", "titles II and III of the Federal Employees Pay Act of 1945, as amended (5 U.S.C. 911 and the following)", and "section 301 of the Dual Compensation Act", respectively, on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1964—Pub. L. 88-448 inserted words "without regard to section 5533 of title 5".

1960—Pub. L. 86-397 substituted "Secretary of Commerce" for "Weather Bureau", authorized the Secretary to fix the compensation of the employees, and limited the base rates to not more than the maximum scheduled rate for GS-12.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-448 effective on the first day of the first month which begins later than the ninetieth day following Aug. 19, 1964, see section 403 of Pub. L. 88-448.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5533.

§ 328. Transfer from other Government Departments of surplus equipment and supplies for Arctic stations

Subject to approval of the President, and without charge to the National Weather Service, the Secretary of the Army, the Secretary of the Air Force, and the Secretary of the Navy are authorized to transfer to the National Weather Service equipment and supplies which are surplus to the needs of their respective Departments and necessary for the establishment, maintenance, and operation of Arctic weather stations.

(June 2, 1948, ch. 373, § 4, 62 Stat. 286; 1965 Reorg. Plan No. 2, 1970 eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

TRANSFER OF FUNCTIONS

All functions vested by law (including reorganization plan) in the Bureau of the Budget or the Director of the Bureau of the Budget were transferred to the President of the United States by section 101 of Reorg. Plan No. 2, of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of 1970 Reorg. Plan No. 2, redesignated the Bureau of the Budget as the Office of Management and Budget.

The Weather Bureau was consolidated with the Coast and Geodetic Survey to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out as a note under section 311 of this title. All functions of the Bureau and the Chief of the Bureau were transferred to the Secretary of Commerce by the Reorg. Plan. Subsequently, the Environmental Science Services Administration was abolished, and the National Oceanic and Atmospheric Administration was established. By Department Organization Order 25-5A, the Secretary delegated to NOAA his functions under this chapter of the Code. By order of the Acting Associate Administrator of NOAA, the organizational name of the Weather Bureau was changed to the National Weather Service. For further details, see codification note under section 311 of this title.

§ 329. Omitted

CODIFICATION

Section, Pub. L. 85-469, title I, § 101, June 25, 1958, 72 Stat. 234; Pub. L. 86-88, title I, § 101, July 13, 1959, 73 Stat. 207, which prescribed the maximum base rate of pay for employees conducting meteorological investigations in the Arctic region, was from an appropriation act and is omitted in view of section 327 of this title which authorizes the Secretary of Commerce to establish the rates of compensation for such personnel. Provisions of this section were repeated in Pub. L. 86-451, title I, § 101, May 13, 1960, 74 Stat. 99.

CHAPTER 9A—WEATHER MODIFICATION ACTIVITIES OR ATTEMPTS; REPORTING REQUIREMENT

Sec.
330. Definitions.
330a. Report requirement; form; information; time of submission.
330b. Duties of Secretary.
    (a) Records, maintenance; summaries, publication.
    (b) Public availability of reports, documents, and other information.
    (c) Disclosure of confidential information; prohibition; exceptions.
330c. Authority of Secretary.
    (a) Information; reports and records; inspection; availability of data from any Federal agency as limitation of authority.
    (b) Noncompliance; application of Attorney General; jurisdiction; orders; contempts.
330d. Violation; penalty.
330e. Authorization of appropriations.

§ 330. Definitions

As used in this chapter—

(1) The term "Secretary" means the Secretary of Commerce.

(2) The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, any State or local government or any agency thereof, or any other organization, whether commercial or nonprofit, who is performing weather modification activities, except where acting solely as an employee, agent, or independent contractor of the Federal Government.

(3) The term "weather modification" means any activity performed with the intention of producing artificial changes in the composition, behavior, or dynamics of the atmosphere.

(4) The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or insular possession of the United States.

(Pub. L. 92-205, § 1, Dec. 18, 1971, 85 Stat. 735.)

National Weather Modification Policy Act of 1976

Pub. L. 94-490, §§ 1 to 6(a), Oct. 13, 1976, 90 Stat. 2359-2361, provided:

"[Section 1]. That this Act may be cited as the National Weather Modification Policy Act of 1976.

"Sec. 2. Declaration of Policy.

"(a) Findings.—The Congress finds and declares the following:

"(1) Weather-related disasters and hazards, including drought, hurricanes, tornadoes, hail, lightning, fog, floods, and frost, result in substantial human suffering and loss of life, billions of dollars of annual economic losses to owners of crops and other property, and substantial financial loss to the United States Treasury;

"(2) Weather modification technology has significant potential for preventing, diverting, moderating, or ameliorating the adverse effects of such disasters and hazards and enhancing crop production and the availability of water;

"(3) The interstate nature of climatic and related phenomena, the severe economic hardships experienced as the result of occasional drought and other adverse meteorological conditions, and the existing role and responsibilities of the Federal Government with respect to disaster relief, require appropriate Federal action to prevent or alleviate such disasters and hazards; and

"(4) Weather modification programs may have long-range and unexpected effects on existing climatic patterns which are not confined by national boundaries.

"(b) Purpose.—It is therefore declared to be the purpose of the Congress in this Act to develop a comprehensive and coordinated national weather modification policy and a national program of weather modification research and development—

"(1) to determine the means by which deliberate weather modification can be used at the present time to decrease the adverse impact of weather on agriculture, economic growth, and the general public welfare, and to determine the potential for weather modification;

"(2) to conduct research into those scientific areas considered most likely to lead to practical techniques for drought prevention or alleviation and other forms of deliberate weather modification;

"(3) to develop practical methods and devices for weather modification;

"(4) to make weather modification research findings available to interested parties;

"(5) to assess the economic, social, environmental, and legal impact of an operational weather modification program;

"(6) to develop both national and international mechanisms designed to minimize conflicts which may arise with respect to the peaceful uses of weather modification; and

"(7) to integrate the results of existing experience and studies in weather modification activities into model codes and agreements for regulation of domestic and international weather modification activities.

"Sec. 3. Definitions.

"As used in this Act:

"(1) The term 'Secretary' means the Secretary of Commerce.

"(2) The term 'State' means any State of the United States, the District of Columbia, or any Commonwealth, territory, or possession of the United States.

"(3) The term 'weather modification' means any activity performed with the intention and expectation of producing changes in precipitation, wind, fog, lightning, and other atmospheric phenomena.

"Sec. 4. Study.

"The Secretary shall conduct a comprehensive investigation and study of the state of scientific knowledge concerning weather modification, the present state of development of weather modification technology, the problems impeding effective implementation of weather modification technology, and other related matters. Such study shall include—

"(1) a review and analysis of the present and past research efforts to establish practical weather modification technology, particularly as it relates to reducing loss of life and crop and property destruction;

"(2) a review and analysis of research needs in weather modification to establish areas in which more research could be expected to yield the greatest return in terms of practical weather modification technology;

"(3) a review and analysis of existing studies to establish the probable economic importance to the United States in terms of agricultural production, energy, and related economic factors if the present weather modification technology were to be effectively implemented;

"(4) an assessment of the legal, social, and ecological implications of expanded and effective research and operational weather modification projects;

"(5) formulation of one or more options for a model regulatory code for domestic weather modification activities, such code to be based on a review and analysis of experience and studies in this area, and to be adaptable to State and national needs;

"(6) recommendations concerning legislation desirable at all levels of government to implement a national weather modification policy and program;

"(7) a review of the international importance and implications of weather modification activities by the United States;

"(8) a review and analysis of present and past funding for weather modification from all sources to determine the sources and adequacy of funding in the light of the needs of the Nation;

"(9) a review and analysis of the purpose, policy, methods, and funding of the Federal departments and agencies involved in weather modification and of the existing interagency coordination of weather modification research efforts;

"(10) a review and analysis of the necessity and feasibility of negotiating an international agreement concerning the peaceful uses of weather modification; and

"(11) formulation of one or more options for a model international agreement concerning the peaceful uses of weather modification and the regulation of national weather modification activities; and a review and analysis of the necessity and feasibility of negotiating such an agreement.

"Sec. 5. Report.

"(a) In General.—The Secretary shall prepare and submit to the President and the Congress, within 1 year after the date of enactment of this Act [Oct. 13, 1976], a final report on the findings, conclusions, and recommendations of the study conducted pursuant to section 4. Such report shall include:

"(1) a summary of the findings made with respect to each of the areas of investigation specified in section 4;

"(2) other findings which are pertinent to the determination and implementation of a national policy on weather modifications;

"(3) a recommended national policy on weather modification and a recommended national weather modification research and development program which is consistent with, and likely to contribute to, achieving the objectives of such policy;

"(4) recommendations for levels of Federal funding sufficient to support adequately a national weather modification research and development program;

"(5) recommendations for any changes in the organization and involvement of Federal departments and agencies in weather modification which may be needed to implement effectively the recommended national policy on weather modification and the recommended research and development program; and

"(6) recommendations for any regulatory and other legislation which may be required to implement such policy and program or for any international agreement which may be appropriate concerning the peaceful uses of weather modification, including recommendations concerning the dissemination, refinement, and possible implementation of the model domestic code and international agreement developed under the specifications of section 4.

Each department, agency, and other instrumentality of the Federal Government is authorized and directed to furnish the Secretary any information which the Secretary deems necessary to carry out his functions under this Act.

"(b) OPERATION AND CONSULTATION.—The Secretary shall solicit and consider the views of State agencies, private firms, institutions of higher learning, and other interested persons and governmental entities in the conduct of the study required by section 4, and in the preparation of the report required by subsection (a).

"SEC. 6. AUTHORIZATION FOR APPROPRIATIONS.

"(a) There is authorized to be appropriated to the Secretary for the purposes of carrying out the provisions of this Act not to exceed $1,000,000."

§ 330a. Report requirement; form; information; time of submission

No person may engage, or attempt to engage, in any weather modification activity in the United States unless he submits to the Secretary such reports with respect thereto, in such form and containing such information, as the Secretary may by rule prescribe. The Secretary may require that such reports be submitted to him before, during, and after any such activity or attempt.

(Pub. L. 92-205, § 2, Dec. 18, 1971, 85 Stat. 736.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 330d of this title.

§ 330b. Duties of Secretary

(a) Records, maintenance; summaries, publication

The Secretary shall maintain a record of weather modification activities, including attempts, which take place in the United States and shall publish summaries thereof from time to time as he determines.

(b) Public availability of reports, documents, and other information

All reports, documents, and other information received by the Secretary under the provisions of this chapter shall be made available to the public to the fullest practicable extent.

(c) Disclosure of confidential information; prohibition; exceptions

In carrying out the provisions of this section, the Secretary shall not disclose any information referred to in section 1905 of title 18 and is otherwise unavailable to the public, except that such information shall be disclosed—

(1) to other Federal Government departments, agencies, and officials for official use upon request;

(2) in any judicial proceeding under court order formulated to preserve the confidentiality of such information without impairing the proceeding; and

(3) to the public if necessary to protect their health and safety.

(Pub. L. 92-205, § 3, Dec. 18, 1971, 85 Stat. 736.)

§ 330c. Authority of Secretary

(a) Information; reports and records; inspection; availability of data from any Federal agency as limitation of authority

The Secretary may obtain from any person whose activities relate to weather modification by rule, subpena, or otherwise such information in the form of testimony, books, records, or other writings, may require the keeping and furnishing of such reports and records, and may make such inspection of the books, records, and other writings and premises and property of any person as may be deemed necessary or appropriate by him to carry out the provisions of this chapter, but this authority shall not be exercised to obtain any information with respect to which adequate and authoritative data are available from any Federal agency.

(b) Noncompliance; application of Attorney General; jurisdiction; orders; contempts

In case of contumacy by, or refusal to obey a subpena served upon any person pursuant to this section, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the Attorney General, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Pub. L. 92-205, § 4, Dec. 18, 1971, 85 Stat. 736.)

§ 330d. Violation; penalty

Any person who knowingly and willfully violates section 330a of this title, or any rule issued thereunder, shall upon conviction thereof be fined not more than $10,000.

(Pub. L. 92-205, § 5, Dec. 18, 1971, 85 Stat. 736.)

§ 330e. Authorization of appropriations

There are authorized to be appropriated $150,000 for the fiscal year ending June 30, 1972, and $200,000 each for the fiscal years 1973 through 1980, to carry out the provisions of this chapter.

(Pub. L. 92-205, § 6, Dec. 18, 1971, 85 Stat. 736; Pub. L. 93-436, Oct. 5, 1974, 88 Stat. 1212; Pub. L. 94-490, § 6(b), Oct. 13, 1976, 90 Stat. 2362.)

AMENDMENTS

1976—Pub. L. 94-490 authorized the appropriation of $200,000 for each of the fiscal years 1978, 1979, and 1980.

1974—Pub. L. 93-436 extended the authorization of appropriation of $200,000 for each of the fiscal years ending June 30, 1975, 1976, and 1977.

CHAPTER 10—WAR FINANCE CORPORATION

§§ 331 to 374. Omitted

CODIFICATION

Sections referred to War Finance Corporation. They were derived from acts Apr. 5, 1918, ch. 45, §§ 1 to 19, 24 to 28, 300, 302 to 304, 40 Stat. 506 to 512, 514, 515; Mar. 3, 1919, ch. 100, § 10, 40 Stat. 1314; Jan. 4, 1921, ch. 9, 41 Stat. 1084; Aug. 24, 1921, ch. 80, §§ 1 to 3, 5 to 7, 42 Stat. 181 to 184; June 10, 1922, ch. 215, §§ 2, 3, 42 Stat. 634; Mar. 4, 1923, ch. 252, title V, §§ 502, 503, 42 Stat. 1481; Feb. 20, 1924, ch. 37, §§ 1 to 4, 43 Stat. 14, 15; Apr. 4, 1928, ch. 315, 45 Stat. 405; May 29, 1928, ch. 901, § 1(116), 45 Stat. 995; Mar. 1, 1929, ch. 444, 45 Stat. 1442; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704.

War Finance Corporation was abolished and Secretary of Treasury was directed to complete and wind up its affairs and dispose of its assets in accordance with act Mar. 1, 1929, ch. 444, 45 Stat. 1442, not later than Dec. 31, 1939. All its functions, property, and obligations not previously transferred by statute to Secretary of Treasury were transferred to Department of Treasury by Reorg. Plan No. II, of 1939, § 2(c), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1432, set out in the Appendix to Title 5, Government Organization and Employees. See also sections 401 to 404 of Reorg. Plan No. II of 1939 for provisions relating to transfer of functions, records, property, personnel, and funds.

In a letter addressed to the Speaker of the House of Representatives and dated October 26, 1942, the Acting Secretary of the Treasury transmitted the final report of the affairs of the War Finance Corporation covering the period of its existence from April 5, 1918 through June 30, 1939.

REPEALS

Sections 1, 2, 5 to 19, 200 to 206, 300 and 302 to 306 of act Apr. 5, 1918, ch. 45, 40 Stat. 506 to 512, 514, 515, formerly classified to sections 331 to 347 and 361 to 365 of this title, were repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 643.

Sections 3 and 4 of act Apr. 5, 1918, ch. 45, 40 Stat. 507, which authorized the appointment of Government employees to membership on the Board of Directors of the War Finance Corporation and provided for their compensation, previously omitted from this Code, were repealed by Pub. L. 88-448, title IV, § 402(a)(16), Aug. 19, 1964, 78 Stat. 493.

Sections 9 and 10 of act Mar. 3, 1919, ch. 100, 40 Stat. 1313, 1314, formerly classified to section 343 of this title, were repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 644.

Act Jan. 4, 1921, ch. 9, 41 Stat. 1084, formerly classified to section 373 of this title, was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 644.

Act Aug. 24, 1921, ch. 80, 42 Stat. 181, formerly classified to sections 331, 340, 341, 343, 348 to 352 and 364 of this title, was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 645.

Act June 10, 1922, ch. 215, 42 Stat. 634, formerly classified to sections 340 and 343 of this title, was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 645.

Sections 501 to 503 of act Mar. 4, 1923, ch. 252, 42 Stat. 1480, 1481, formerly classified to sections 340 and 343 of this title, were repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 645.

Act Feb. 20, 1924, ch. 37, 43 Stat. 14, formerly classified to sections 343, 371 and 372 of this title, was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 645.

Act May 29, 1928, ch. 901, § 1(116), 45 Stat. 995, formerly classified to section 347 of this title, was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 647.

CHAPTER 10A—COLLECTION OF STATE CIGARETTE TAXES

Sec.
375. Definitions.
376. Reports to State tobacco tax administrator; contents; presumptive evidence.
377. Penalties.
378. Jurisdiction to prevent and restrain violations.

§ 375. Definitions

For the purposes of this chapter—

(1) The term "person" includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

(2) The term "cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(3) The term "distributor licensed by or located in such State" means—

(A) in the case of any State which by State statute or regulation authorizes the distribution of cigarettes at wholesale or retail, any person so authorized, or

(B) in the case of any other State, any person located in such State who distributes cigarettes at wholesale or retail;

but such term in no case includes a person who acquires cigarettes for purposes other than resale.

(4) The term "use", in addition to its ordinary meaning, means the consumption, storage, handling, or disposal of cigarettes.

(5) The term "tobacco tax administrator" means the State official duly authorized to administer the cigarette tax law of a State.

(6) The term "State" includes the District of Columbia, Alaska, Hawaii, and the Commonwealth of Puerto Rico.

(7) The term "transfers for profit" means any transfer for profit or other disposition for profit, including any transfer or disposition by an agent to his principal in connection with which the agent receives anything of value.

(Oct. 19, 1949, ch. 699, § 1, 63 Stat. 884; Aug. 9, 1955, ch. 695, § 1, 69 Stat. 627.)

AMENDMENTS

1955—Act Aug. 9, 1955, inserted definitions of "State" and "distributor licensed by or located in such State", broadened the definition of "person", and substituted the definition of "transfers for profit" for "disposing of".

EFFECTIVE DATE OF 1955 AMENDMENT

Section 2 of act Aug. 9, 1955, provided that:

"(a) Except as provided in subsection (b), the amendments made by this Act [to sections 375 to 378 of this title] shall take effect thirty days after the date of its enactment [Aug. 9, 1955].

"(b) The provisions of section 2(a) of the Act of October 19, 1949, as amended by this Act [section 376(a) of this title], insofar as it requires the filing of memoranda or copies of invoices with the appropriate tax administrator for shipments of cigarettes into the District of Columbia, Alaska, Hawaii, and the Commonwealth of Puerto Rico, shall apply in respect of memoranda or copies of invoices covering shipments made during calendar months beginning after the month in which this Act is enacted [August 1955]."

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, upon the issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, upon the issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of title 48.

§ 376. Reports to State tobacco tax administrator; contents; presumptive evidence

(a) Any person who sells or transfers for profit cigarettes in interstate commerce, whereby such cigarettes are shipped into a State taxing the sale or use of cigarettes, to other than a distributor licensed by or located in such State, or who advertises or offers cigarettes for such a sale or transfer and shipment, shall—

(1) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business; and

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(b) The fact that any person ships or delivers for shipment any cigarettes shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a)(1) of this section, be presumptive evidence (1) that such cigarettes were sold, or transferred for profit, by such person, and (2) that such sale or transfer was to other than a distributor licensed by or located in such State.

(Oct. 19, 1949, ch. 699, § 2, 63 Stat. 884; Aug. 15, 1953, ch. 512, title II, § 201(a), 67 Stat. 617; Aug. 9, 1955, ch. 695, § 1, 69 Stat. 627.)

AMENDMENTS

1955—Act Aug. 9, 1955, designated existing provisions as subsec. (a), inserted provisions therein requiring the filing of a statement of name, trade name, address, and places of business by persons who sell or transfer for profit cigarettes in interstate commerce or by persons who advertise or offer cigarettes for such sale or transfer, and added subsec. (b).

1953—Act Aug. 15, 1953, required that the memorandum or copy of invoice be filed with, rather than forwarded to, the tobacco tax administrator.

EFFECTIVE DATE OF 1955 AMENDMENT

For effective date of amendment by act Aug. 9, 1955, see section 2 of act Aug. 9, 1955, set out as a note under section 375 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT

Section 201(b) of act Aug. 15, 1953, provided that the amendment to this section "shall apply only in respect of memoranda or copies of invoices covering shipments made during the calendar month in which this Act is enacted [August 15, 1953] and subsequent calendar months."

§ 377. Penalties

Whoever violates any provision of this chapter shall be guilty of a misdemeanor and shall be fined not more than $1,000, or imprisoned not more than 6 months, or both.

(Oct. 19, 1949, ch. 699, § 3, 63 Stat. 885; Aug. 9, 1955, ch. 695, § 1, 69 Stat. 628.)

AMENDMENTS

1955—Act Aug. 9, 1955, substituted "any provision of this chapter" for "the provisions of this chapter".

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Aug. 9, 1955, effective 30 days after Aug. 9, 1955, see section 2 of act Aug. 9, 1955, set out as a note under section 375 of this title.

§ 378. Jurisdiction to prevent and restrain violations

The United States district courts shall have jurisdiction to prevent and restrain violations of this chapter.

(Oct. 19, 1949, ch. 699, § 4, as added Aug. 9, 1955, ch. 695, § 1, 69 Stat. 628.)

EFFECTIVE DATE

Section effective 30 days after Aug. 9, 1955, see section 2 of act Aug. 9, 1955, set out as a note under section 375 of this title.

CHAPTER 10B—STATE TAXATION OF INCOME FROM INTERSTATE COMMERCE

SUBCHAPTER I—NET INCOME TAXES

Sec.
381. Imposition of net income tax.
    (a) Minimum standards.
    (b) Domestic corporations; persons domiciled in or residents of a State.
    (c) Sales or solicitation of orders for sales by independent contractors.
    (d) Definitions.
382. Assessment of net income taxes; limitations; collections.
383. Definition.
384. Separability of provisions.

SUBCHAPTER II—DISCRIMINATORY TAXES

391. Tax on or with respect to generation or transmission of electricity.

SUBCHAPTER I—NET INCOME TAXES

§ 381. Imposition of net income tax

(a) Minimum standards

No State, or political subdivision thereof, shall have power to impose, for any taxable year ending after September 14, 1959, a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:

(1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and

(2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

(b) Domestic corporations; persons domiciled in or residents of a State

The provisions of subsection (a) of this section shall not apply to the imposition of a net income tax by any State, or political subdivision thereof, with respect to—

(1) any corporation which is incorporated under the laws of such State; or

(2) any individual who, under the laws of such State, is domiciled in, or a resident of, such State.

(c) Sales or solicitation of orders for sales by independent contractors

For purposes of subsection (a) of this section, a person shall not be considered to have engaged in business activities within a State during any taxable year merely by reason of sales in such State, or the solicitation of orders for sales in such State, of tangible personal property on behalf of such person by one or more independent contractors, or by reason of the maintenance, of an office in such State by one or more independent contractors whose activities on behalf of such person in such State consist solely of making sales, or soliciting orders for sales, or tangible personal property.

(d) Definitions

For purposes of this section—

(1) the term "independent contractor" means a commission agent, broker, or other independent contractor who is engaged in selling, or soliciting orders for the sale of, tangible personal property for more than one principal and who holds himself out as such in the regular course of his business activities; and

(2) the term "representative" does not include an independent contractor.

(Pub. L. 86-272, title I, § 101, Sept. 14, 1959, 73 Stat. 555.)

STUDY AND REPORT BY CONGRESSIONAL COMMITTEES OF STATE TAXATION FROM INTERSTATE COMMERCE

Title II of Pub. L. 86-272, as amended by Pub. L. 87-17, Apr. 7, 1961, 75 Stat. 41; Pub. L. 87-435, Apr. 21, 1962, 76 Stat. 55; Pub. L. 88-42, June 21, 1963, 77 Stat. 67; Pub. L. 88-286, Mar. 18, 1964, 78 Stat. 166, and repealed by Pub. L. 94-455, title XXI, § 2121(a), Oct. 4, 1976, 90 Stat. 1914, provided for a study by the Committee on the Judiciary of the House of Representatives and the Committee on Finance of the United States Senate, acting separately or jointly, or any duly authorized subcommittee thereof, of all matters pertaining to the taxation of interstate commerce by the States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, or any political or taxing subdivision of the foregoing, and for a report together with their proposals for legislation on or before June 30, 1965.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 382 of this title.

§ 382. Assessment of net income taxes; limitations; collection

(a) No State, or political subdivision thereof, shall have power to assess, after September 14, 1959, any net income tax which was imposed by such State or political subdivision, as the case may be, for any taxable year ending on or before such date, on the income derived within such State by any person from interstate commerce, if the imposition of such tax for a taxable year ending after such date is prohibited by section 381 of this title.

(b) The provisions of subsection (a) of this section shall not be construed—

(1) to invalidate the collection, on or before September 14, 1959, of any net income tax imposed for a taxable year ending on or before such date, or

(2) to prohibit the collection, after September 14, 1959, of any net income tax which was assessed on or before such date for a taxable year ending on or before such date.

(Pub. L. 86-272, title I, § 102, Sept. 14, 1959, 73 Stat. 556.)

§ 383. Definition

For purposes of this chapter, the term "net income tax" means any tax imposed on, or measured by, net income.

(Pub. L. 86-272, title I, § 103, Sept. 14, 1959, 73 Stat. 556.)

§ 384. Separability of provisions

If any provision of this chapter or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

(Pub. L. 86-272, title I, § 104, Sept. 14, 1959, 73 Stat. 556.)

SUBCHAPTER II—DISCRIMINATORY TAXES

§ 391. Tax on or with respect to generation or transmission of electricity

No State, or political subdivision thereof, may impose or assess a tax on or with respect to the generation or transmission of electricity which discriminates against out-of-State manufacturers, producers, wholesalers, retailers, or consumers of that electricity. For purposes of this section a tax is discriminatory if it results, either directly or indirectly, in a greater tax burden on electricity which is generated and transmitted in interstate commerce than on electricity which is generated and transmitted in intrastate commerce.

(Pub. L. 86-272, title II, § 201, as added Pub. L. 94-455, title XXI, § 2121(a), Oct. 4, 1976, 90 Stat. 1914.)

Effective Date

Section 2121(b) of Pub. L. 94-455 provided that: "The amendment made by subsection (a) [enacting this section] shall take effect beginning June 30, 1974."

CHAPTER 11—CAUSTIC POISONS

§§ 401 to 411. Repealed. Pub. L. 86-613, § 19, formerly § 18, July 12, 1960, 74 Stat. 381, renumbered Pub. L. 91-113, § 4(a), Nov. 6, 1969, 83 Stat. 189

Sections 401 to 411, act Mar. 4, 1927, ch. 489, §§ 1 to 10, 12, 44 Stat. 1406 to 1410, prohibited misbranded shipments of dangerous caustic or corrosive substances in interstate or foreign commerce, and are now covered by chapter 30 [§ 1261 et seq.] of this title.

Effective Date of Repeal; Savings Provisions

Pub. L. 86-613, § 19, formerly § 18, July 12, 1960, 74 Stat. 381, renumbered and amended by Pub. L. 91-113, § 4(a), (b)(2), Nov. 6, 1969, 83 Stat. 189, 190, provided that: "The Federal Caustic Poison Act [sections 401 to 411 of this title] (44 Stat. 1406) is repealed effective at the close of the sixth calendar month after the month of enactment of this Act [July 12, 1960], except that the Federal Caustic Poison Act shall remain in full force and effect with respect to any 'dangerous caustic or corrosive substance' (as defined by that Act) which is an article subject to the Federal Food, Drug, and Cosmetic Act [chapter 9 of title 21] and which is, by virtue of paragraph 2 of section 2(f) of this Act [section 1261(f)(2) of this title] excluded from the term 'hazardous substance' as defined in this Act [chapter 30 of this title]: *Provided,* That, if the Secretary, pursuant to section 17(b) of this Act [set out as a note under section 1261 of this title], prescribes an additional period or periods during which violations of this Act [chapter 30 of this title] shall not be enforceable and if such additional period or periods are applicable to violations of this Act [chapter 30 of this title] involving one or more substances defined as 'dangerous caustic or corrosive substances' by the Federal Caustic Poison Act, that Act shall, with respect to such substance or substances, remain in full force and effect during such additional period or periods; *Provided further,* That, with respect to violations, liabilities incurred or appeals taken prior to the close of said sixth month or, if applicable, prior to the expiration of the additional period or periods referred to in the preceding proviso, all provisions of the Federal Caustic Poison Act shall be deemed to remain in full force for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violations, liabilities, and appeals."

CHAPTER 12—DISCRIMINATION AGAINST FARMERS' COOPERATIVE ASSOCIATIONS BY BOARDS OF TRADE

Sec.
431. Definitions.
432. Boards of trade dealing in agricultural products; exclusion of representatives of cooperative associations prohibited.
433. Remedies of cooperative association excluded from representation.

§ 431. Definitions

When used in this chapter (a) the term "agricultural products", means agricultural, horticultural, viticultural, and dairy products, food products of livestock, the products of poultry and bee raising, the edible products of forestry, and any and all products raised or produced on farms and processed or manufactured products thereof, transported or intended to be transported in interstate and/or foreign commerce.

(b) The words "board of trade" shall be held to include and mean any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling agricultural products or receiving the same for sale on consignment, except markets designated as contract markets under the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(c) The words "interstate commerce" shall be construed to mean commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof, or within any Territory or possession, or the District of Columbia.

(d) For the purposes of this chapter (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in dealing in agricultural products whereby they are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this chapter. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

(e) The word "person" shall be construed to import the plural or singular, and shall include individuals, associations, partnerships, corporations, and trusts.

(f) The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust, within the scope of his employment or office, shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

(Mar. 4, 1927, ch. 508, § 1, 44 Stat. 1423; June 15, 1936, ch. 545, § 1, 49 Stat. 1491.)

References in Text

The Commodity Exchange Act, referred to in subsec. (b), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§ 1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables volume.

Amendments

1936—Par. (b). Act June 15, 1936, substituted "Commodity Exchange Act" for "Grain Futures Act".

§ 432. Boards of trade dealing in agricultural products; exclusion of representatives of cooperative associations prohibited

No board of trade whose members are engaged in the business of buying or selling agricultural products or receiving the same for sale on consignment in interstate commerce shall exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association, corporate or otherwise, composed substantially of producers of agricultural products, or any such representative of any organization acting for a group of such associations, if such association or organization has adequate financial responsibility and complies or agrees to comply with such terms and conditions as are or may be imposed lawfully on other members of such board: *Provided,* That no rule of a board of trade shall forbid or be construed to forbid the return on a patronage basis by such cooperative association or organization to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

(Mar. 4, 1927, ch. 508, § 2, 44 Stat. 1424.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 433 of this title.

§ 433. Remedies of cooperative association excluded from representation

Any such cooperative association or any such organization whose duly authorized representative is excluded from such membership and privileges by any board of trade referred to in section 432 of this title may sue in the United States District Court in whose jurisdiction such board of trade is operated or maintained for a mandatory injunction compelling such board of trade to admit such duly authorized representative to such membership and privileges and for any damages sustained, and such court shall have jurisdiction to issue such an injunction and to award such incidental damages as it may deem appropriate.

(Mar. 4, 1927, ch. 508, § 3, 44 Stat. 1424.)

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

CHAPTER 13—TEXTILE FOUNDATION

Sec.
501. Creation of body corporate; directors; principal office; agencies.
502. Board of directors of Textile Foundation.
    (a) Composition.
    (b) Term of successor; vacancies.
    (c) Compensation; reimbursement for expenses.
    (d) Prohibitions against holding two or more offices inapplicable.
    (e) Election of chairman.
    (f) Board to direct corporation.
503. Purpose of Foundation.
504. Powers of Foundation.
505. Report to Congress.
506. Amendment and repeal of chapter.

§ 501. Creation of body corporate; directors; principal office; agencies

The Secretary of Commerce, the Secretary of Agriculture, and three directors first appointed as provided in section 502 of this title and their successors, are created a body corporate of the District of Columbia by the name of the "Textile Foundation" (in this chapter referred to as the corporation). The incorporation shall be held effected upon the date of the first meeting of the board of directors. The corporation shall maintain its principal office in the District of Columbia and may establish such agencies or branch offices at such places as it deems advisable.

(June 10, 1930, ch. 440, § 1, 46 Stat. 539.)

§ 502. Board of directors of Textile Foundation

(a) Composition

The board of directors of the corporation (in this chapter referred to as the board) shall be constituted as follows:

(1) The Secretary of Commerce;
(2) The Secretary of Agriculture; and
(3) Three individuals, familiar with the textile industry or its allied branches, including that of production of raw materials, and their successors, to be appointed by the President, one for a term of two years, one for a term of three years, and one for a term of four years, from the date the incorporation is effected.

(b) Term of successor; vacancies

Each successor shall be appointed for a term of four years from the date of the expiration of the term of the member whom he succeeds, except that any successor appointed to fill a vacancy occurring prior to the expiration of the term shall be appointed only for the unexpired term of the member whom he succeeds. A vacancy in the office of a director shall not impair the power of the remaining directors to execute the functions of the board. A majority of the directors shall constitute a quorum for the transaction of the business of the board.

(c) Compensation; reimbursement for expenses

The members of the board shall serve without compensation for their services as such members, but they shall be reimbursed from the corporation for actual expenses incurred by them while in the performance of the functions vested in the board by this chapter.

(d) Prohibitions against holding two or more offices inapplicable

Any officer or employee of the United States, or of any corporation acting as a governmental agent of the United States, may, in addition to his present office, hold the office of director of the Textile Foundation without regard to any provision of law prohibiting the holding of more than one office.

(e) Election of chairman

The board at its first meeting and at each annual meeting thereafter shall elect a chairman.

(f) Board to direct corporation

The board shall direct the exercise of all the powers of the corporation.

(June 10, 1930, ch. 440, § 2, 46 Stat. 539.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 501 of this title.

§ 503. Purpose of Foundation

(a) The purposes of the corporation shall be to administer and expend its funds and other property for scientific and economic research for the benefit and development of the textile industry, its allied branches, and including that of production of raw materials.

(b) The Textile Alliance, Incorporated, is authorized to pay to the corporation the amounts payable in accordance with the arrangement between the Textile Alliance, Incorporated, and the Department of State, in lieu of paying such amounts into the United States Treasury; except that any amounts payable in accordance with such arrangement, and paid into the United States Treasury before June 10, 1930, are authorized to be appropriated to the credit of the corporation. Upon the receipt by the corporation of such amounts the liability of the Textile Alliance, Incorporated, under such arrangement shall be extinguished.

(June 10, 1930, ch. 440, § 3, 46 Stat. 539.)

§ 504. Powers of Foundation

The corporation—

(a) Shall have perpetual succession;

(b) May sue and be sued;

(c) May adopt a corporate seal and alter it at pleasure;

(d) May adopt and alter bylaws;

(e) May appoint officers and agents;

(f) May acquire by purchase, devise, bequest, gift, or otherwise, and hold, encumber, convey, or otherwise dispose of, such real and personal property as may be necessary or appropriate for its corporate purposes;

(g) May invest and reinvest the principal and interest of its funds; and

(h) Generally, may do any and all lawful acts necessary or appropriate to carry out the purposes for which the corporation is created.

(June 10, 1930, ch. 440, § 4, 46 Stat. 540.)

§ 505. Report to Congress

The corporation shall, on or before the 1st day of December in each year, transmit to Congress and to the President a report of its proceedings and activities for the preceding calendar year, including a detailed statement of its receipts and expenditures. Such reports shall not be printed as public documents.

(June 10, 1930, ch. 440, § 5, 46 Stat. 540.)

§ 506. Amendment and repeal of chapter

The right to alter, amend, or repeal this chapter is expressly reserved.

(June 10, 1930, ch. 440, § 6, 46 Stat. 540.)

CHAPTER 13A—FISHING INDUSTRY

Sec.

521. Fishing industry; associations authorized; aquatic products defined; marketing agencies; requirements.
522. Monopolies or restraints of trade; service of complaint by Secretary of Commerce; hearing; order to cease and desist; jurisdiction of district court.

§ 521. Fishing industry; associations authorized; aquatic products defined; marketing agencies; requirements

Persons engaged in the fishery industry, as fishermen, catching, collecting, or cultivating aquatic products, or as planters of aquatic products on public or private beds, may act together in associations, corporate or otherwise, with or without capital stock, in collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged.

The term "aquatic products" includes all commercial products of aquatic life in both fresh and salt water, as carried on in the several States, the District of Columbia, the several Territories of the United States, the insular possessions, or other places under the jurisdiction of the United States.

Such associations may have marketing agencies in common, and such associations and their members may make the necessary contracts and agreements to effect such purposes: *Provided, however,* That such associations are operated for the mutual benefit of the members thereof, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

and in any case to the following:

Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

(June 25, 1934, ch. 742, § 1, 48 Stat. 1213.)

§ 522. Monopolies or restraints of trade; service of complaint by Secretary of Commerce; hearing; order to cease and desist; jurisdiction of district court

If the Secretary of Commerce shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Commerce may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of Commerce shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any aquatic product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade. On the request of such association or if such association fails or neglects for thirty days to obey such order, the Secretary of Commerce shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all the records in the proceedings, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Commerce and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review therein, the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court shall, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer, or agent thereof, engaged in carrying on its business, or on any attorney authorized to appear in such proceeding for such association and such service shall be binding upon such association, the officers and members thereof.

(June 25, 1934, ch. 742, § 2, 48 Stat. 1214; 1939 Reorg. Plan No. II, § 4(e), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1431; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

Transfer of Functions

Secretary of Commerce was substituted for Secretary of the Interior in view of: the creation of the National Oceanic and Atmospheric Administration in the Department of Commerce and the Office of Administrator of such Administration; the abolition of the Bureau of Commercial Fisheries in the Interior Department and the Office of Director of such Bureau; transfers of functions, including functions formerly vested by law in the Secretary of the Interior or the Interior Department which were administered through the Bureau of Commercial Fisheries or were primarily related to such Bureau, exclusive of certain enumerated functions with respect to Great Lakes fishery research, Missouri River Reservoir research, Gulf Breeze Biological Laboratory, and Trans-Alaska pipeline investigations; and transfer of marine sport fish program of Bureau of Sport Fisheries and Wildlife by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of the Secretary of Commerce under this section were transferred to the Secretary of the Interior by Reorg. Plan No. II of 1939, set out in the Appendix to Title 5, Government Organization and Employees, which transferred the Bureau of Fisheries from the Department of Commerce to the Department of the Interior.

Federal Rules of Civil Procedure

Application of, see rule 81, Title 28, Appendix, Judiciary and Judicial Procedure.

CHAPTER 14—RECONSTRUCTION FINANCE CORPORATION

Sec.
601 to 616. Repealed or omitted.
616a. Transferred.
617 to 619. Repealed or omitted.

Abolition of Reconstruction Finance Corporation

Reconstruction Finance Corporation was abolished and remaining functions transferred to Housing and Home Finance Agency, Administrator of General Services, Administrator of Small Business Administration, and Secretary of Commerce, such transfer including assets and liabilities, administrative property, personnel, funds, and records, pursuant to 1957 Reorg. Plan No. 1, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out in Appendix II of title 5, Government Organization and Employees. The Plan provided for retirement of capital stock and payment of all unused funds into the Treasury as miscellaneous receipts and required a final report by Secretary of Treasury not later than June 30, 1959. Powers of the Corporation relating to loans and advances were terminated at close of business on sixtieth day after July 30, 1953, through amendment of former section 604(f) of this title by act July 30, 1953, ch. 682, title I, § 102(b), 67 Stat. 230. Consequential liquidation of assets, winding up of affairs, and dissolution of the Corporation and cancellation and retirement of its capital stock were required under former section 608 of this title. Former section 609 of this title required such liquidation, winding up of affairs, and dissolution by Secretary of Treasury where such action had been initiated but not completed by close of business on June 30, 1954.

REORGANIZATION PLAN NO. 1 OF 1957

Eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 29, 1957, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended [see section 901 et seq. of Title 5].

Abolition of the Reconstruction Finance Corporation

Section 1. Definitions

As used in this reorganization plan:

(a) The term "Corporation" means the Reconstruction Finance Corporation.

(b) The term "remaining functions" means (1) all functions of the Corporation, (2) except as otherwise provided in subsections (b) and (c) of section 6 of this reorganization plan, all functions of the Secretary of the Treasury under section 10 of the Reconstruction Finance Corporation Act, as amended (15 U.S.C. 609), and (3) all functions of the Secretary of the Treasury under sections 102 and 106(b) of the Reconstruction Finance Corporation Liquidation Act (67 Stat. 230, 231), as amended [section 603 and section 609 not of this title].

(c) The term "transferees" means the Housing and Home Finance Administrator, the Administrator of General Services, the Administrator of the Small Business Administration, and the Secretary of the Treasury.

Sec. 2. Transfer of Functions

(a) There are hereby transferred to the Housing and Home Finance Administrator the remaining functions with respect to or arising out of (1) the securities and obligations of, loans made to, and contracts or other agreements with, States, municipalities, political subdivisions thereof, public agencies, boards, commissions or other public bodies, and (2) loans, securities and obligations acquired in connection with programs of financial assistance for drainage and irrigation projects.

(b) There are hereby transferred to the Administrator of General Services the remaining functions with respect to or arising out of (1) the affairs of the Smaller War Plants Corporation which were transferred to the Corporation pursuant to Executive Order No. 9665 of December 27, 1945 (11 F.R. 3) and section 207 of Public Law 132—80th Congress 61 Stat. 209), (2) the national defense, war and reconversion activities with respect to which notes of the Corporation were cancelled pursuant to the provisions of Title II of Public Law 860—80th Congress (62 Stat. 1187), and (3) activities of the RFC Price Adjustment Board and the functions transferred to the Corporation by Executive Order No. 9841 of April 23, 1947 (12 F.R. 2645).

(c) Except as otherwise provided in sections 2(d)(1) and 2(d)(2) of this reorganization plan (relating to financial assistance to railroads, etc., and to Schedule A hereto annexed), there are hereby transferred to the Administrator of the Small Business Administration the remaining functions with respect to or arising out of programs of financial assistance to business enterprises and to victims of floods or other disasters.

(d) There are hereby transferred to the Secretary of the Treasury all functions of the Corporation not otherwise transferred by the provisions of this reorganization plan, including, but not limited to, all functions of the Corporation with respect to or arising out of (1) programs of financial assistance to railroad companies, financial institutions, and insurance companies, (2) the obligations and loans listed in Schedule A hereto annexed, and (3) the War Damage Corporation.

(e) The foregoing transfers include the transfer to each transferee, for use in executing his respective functions thereunder, of the powers, authority, rights, and immunities now vested in or available or applicable to the Corporation for carrying out the functions transferred to the transferee under this reorganization plan.

SEC. 3. TRANSFER OF ASSETS AND LIABILITIES

The loans, obligations, securities, capital stock, and other assets pertaining to the functions transferred by section 2 of this reorganization plan (including accrued interest thereon, and property acquired in connection therewith) and the liabilities, contracts, bonds, mortgages, notes and other instruments relating thereto are hereby transferred from the Corporation to the respective transferees: *Provided, however,* That all assets, liabilities, and commitments relating to the functions, transferred by section 2 (a) of this reorganization plan are hereby transferred to the Revolving Fund (Liquidating Programs) established by the Independent Offices Appropriation Act, 1955 (68 Stat. 295) [section 1701g-5 of Title 12].

SEC. 4. ADMINISTRATIVE PROPERTY, PERSONNEL, FUNDS AND RECORDS

In addition to the transfers made by the provisions of section 3 of this reorganization plan, there shall be transferred to the Housing and Home Finance Agency, General Services Administration, Small Business Administration, and Treasury Department so much as the Director of the Bureau of the Budget shall determine to be appropriate by reason of transfers made by sections 2 and 3 of this reorganization plan of the administrative property, personnel, records, liabilities and commitments of the Corporation or of the Office of Production and Defense Lending in the Department of the Treasury and of the authorizations, allocations, and funds available or to be made available with respect to the transferred functions (including, but in no way limiting the generality of the foregoing, the authority to issue notes or other obligations to the Secretary of the Treasury, which may be purchased by the Secretary, under section 7 of the Reconstruction Finance Corporation Act, as amended (15 U.S.C. 606), and the duty of making payments on such notes or obligations issued by or transferred to the respective transferee hereunder). In allocating the administrative expense funds applicable to the functions transferred by the provisions of this reorganization plan and said Director shall allocate and transfer to the General Services Administration as a payment on behalf of the Housing and Home Finance Agency, General Services Administration, Small Business Administration and Treasury Department such sum for rent of building space for the carrying out of the transferred functions during the fiscal year ending June 30, 1958, as the said Director shall determine. Such further measures and disposition as the Director of the Bureau of the Budget shall determine to be necessary in order to effectuate the transfers provided for in this section shall be carried out in such manner and by such agencies as the Director shall direct.

SEC. 5. DELEGATION OF AUTHORITY

Each transferee may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, agency, or administrative unit under his jurisdiction of any function transferred to him by the provisions of this reorganization plan.

SEC. 6. ABOLITION OF THE CORPORATION

(a) The Corporation is hereby abolished.

(b) The Secretary of the Treasury shall retire the capital stock of the Corporation and, subject to the provisions of section 4 hereof, shall pay into the Treasury, as miscellaneous receipts, all unused funds of the Corporation.

(c) Not later than June 30, 1959, the Secretary of the Treasury shall transmit a report to the Congress, which report (1) shall cover the affairs of the Corporation up to the time of the taking effect of the provisions of this reorganization plan, and (2) shall correspond to the final report required by section 10 of the Reconstruction Finance Corporation Act, as amended (15 U.S.C. 609). The function of making the final report provided for in the said section 10 is hereby abolished.

SEC. 7. EFFECTIVE DATE

The provisions of this reorganization plan shall take effect at the time determined under the provisions of section 6(a) of the Reorganization Act of 1949, as amended [see section 906(a) of title 5] or at the close of June 30, 1957, whichever is later.

SCHEDULE A

This schedule annexed to Reorganization Plan No. 1 of 1957 lists by name and address of the obligor or borrower the obligations and loans referred to in clause (2) of section 2(d) of such reorganization plan:

Name of obligor or borrower	*Address*
Alaska Plywood Corp	Juneau, Alaska.
Alford Refrigerated Warehouse	Dallas, Tex.
Braun Bros. Packing Co	Troy, Ohio.
Chromcraft Corp	St. Louis, Mo.
Civic Hotel Corp	Odessa, Tex.
Deep Water Terminals, Inc.	Brooklyn, N. Y.
Detroit Steel Corp	Detroit, Mich.
Hal Roach Studios, Inc	Culver City, Calif.
Hayward Woolen Co.	Whitinsville, Mass.
The Horle Arms Co	Deep River, Conn.
Jack Tar of Arkansas, Inc	Hot Springs, Ark.
Landers Packing Co	Denver, Colo.
Langley Corp	San Diego, Calif.
Lawton Community Hotel	Lawton, Okla.
Lone Star Steel Co	Dallas, Tex.
Louisville Builders Supply Co	Louisville, Ky.
Lustron Corp	Columbus, Ohio.
Mayfair Extension, Inc	Washington, D.C.
New Haven Clock & Watch Co	New Haven, Conn.
Oregon Fibre Products, Inc	Pilot Rock, Oreg.

Name of obligor or borrower	*Address*
The Prudence Co., Inc	New York, N.Y.
Seidelhuber Steel Rolling Mills	Seattle, Wash.
South Water Building Corp	Rockford, Ill.
South Water Machinery Corp	Do.
Texas Consolidated Oils	Dallas, Tex.
Texas Frozen Foods Corp	Harlingen, Tex.
Waltham Watch Co	Waltham, Mass.
Wheland Co	Chattanooga, Tenn.

SHORT TITLE OF ACT JULY 30, 1953, CH. 282, TITLE I

Congress, in enacting the amendments to sections 603(a) and 604(f) of this title; the provisions set out as notes under sections 603 and 609 of this title; the provisions set out as section 459 of Title 40, Public Buildings, Property, and Works; and the provisions set out as notes under sections 98 and 544 of Title 50, War and National Defense, section 1929 and sections 2094 and 2261 of Appendix to title 50, provided by section 101 of such act that they should be popularly known as the "Reconstruction Finance Corporation Liquidation Act".

CONTINUATION OF PENDING PROCEEDINGS

Act July 30, 1953, ch. 282, title I, § 105, 67 Stat. 237, as amended by act June 29, 1954, ch. 410, § 2(c), 68 Stat. 320, provided that: "No suit, action, or other proceeding lawfully commenced by or against the Reconstruction Finance Corporation shall abate by reason of the dissolution of the Corporation; but the court may, on motion or supplemental petition filed at any time within twelve months after the date of such dissolution and showing a necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, allow the same to be maintained by or against the officer or agency of the Government performing the functions with respect to which any such suit, action, or other proceeding was commenced."

EXTENSION OR RENEWAL OF LOANS

Section 4 of Pub. L. 85-536, July 18, 1958, 72 Stat. 396, provided that: "The Secretary of the Treasury is hereby authorized to further extend the maturity of or renew any loan transferred to the Secretary of the Treasury pursuant to Reorganization Plan Numbered 1 of 1957 [set out as a note above], for additional periods not to exceed ten years, if such extension or renewal will aid in the orderly liquidation of such loan."

§§ 601 to 616. Repealed or omitted

CODIFICATION

Section 601, acts Jan. 22, 1932, ch. 8, § 1, 47 Stat. 5; June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202; May 25, 1948, ch. 334, § 1, 62 Stat. 261; 1951 Reorg. Plan No. 1, §§ 1, 5, 9, eff. May 1, 1951, 16 F.R. 3690, 65 Stat. 773, 774, which created the Reconstruction Finance Corporation, was omitted from Code in view of abolition of the Corporation by section 6 of Reorg. Plan. No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out above.

Sections 601a, 601b, acts Jan. 20, 1934, ch. 3, § 1, 48 Stat. 318; Jan. 31, 1935, ch. 2, § 1, 49 Stat. 1, which extended the life of the Corporation until Feb. 1, 1935, and Feb. 1, 1937, respectively, were repealed by act of June 30, 1947, ch. 166, title II, § 206(l), (m), 61 Stat. 208.

Section 602, acts Jan. 22, 1932, ch. 8, § 2, formerly § 3, 47 Stat. 5; July 21, 1932, ch. 520, § 205(b), 47 Stat. 714; July 22, 1932, ch. 522, § 6(f), 47 Stat. 728; June 25, 1940, ch. 427, § 2, 54 Stat. 572; June 30, 1947, ch. 166, title I, § 1, title II, § 206(a), 61 Stat. 202, 208; May 25, 1948, ch. 334, § 2, 62 Stat. 262; Oct. 15, 1949, ch. 695, §§ 4, 5(a), 63 Stat. 880, related to the appointment, qualifications and tenure of directors of the Reconstruction Finance Corporation. It was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 648, 654, 655.

Section 603, acts Jan. 22, 1932, ch. 8, § 3, formerly § 4, 47 Stat. 5; July 21, 1932, ch. 520, § 208(a), 47 Stat. 714; Feb. 24, 1938, ch. 32, § 4, 52 Stat. 80; June 30, 1947, ch. 166, title I, § 1, title II, § 206(a), 61 Stat. 202, 208; May 25, 1948, ch. 334, § 3, 62 Stat. 262; July 30, 1953, ch. 282, title I, § 102(a), 67 Stat. 230; June 29, 1954, ch. 410, § 2(b), 68 Stat. 320, provided for the powers of the Reconstruction Finance Corporation, including appointment and pay of employees. It was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 648, 654, 655.

Section 603a, act Jan. 31, 1935, ch. 2, § 1, 49 Stat. 1, related to salaries of officers and employees. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(m), 61 Stat. 208.

Section 603b, act June 30, 1949, ch. 286, title III, § 301, 63 Stat. 375, which provided for distribution of administrative expenses to the accounts of the Corporation in accordance with generally recognized accounting practices, was omitted from the Code in view of abolition of the Corporation by section 6 of Reorg. Plan. No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 603c, acts June 30, 1949, ch. 286, title III, § 301, 63 Stat. 375; June 30, 1949, ch. 288, title I, § 105, 63 Stat. 381, which proscribed the use of funds of the Corporation for surplus property or for benefit of other agencies, was omitted from the Code in view of abolition of the Corporation by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 604, acts Jan. 22, 1932, ch. 8, § 4, 47 Stat. 6; June 19, 1934, ch. 653, § 6(b), 48 Stat. 1109; June 25, 1940, ch. 427, § 6(b), 54 Stat. 574; Aug. 7, 1946, ch. 811, § 1(a), 60 Stat. 901; June 30, 1947, ch. 166, title I, § 1, 61 Stat. 203; May 25, 1948, ch. 334, § 4, 62 Stat. 263; June 29, 1948, ch. 723, 62 Stat. 1101; July 1, 1948, ch. 784, §§ 3, 4, 62 Stat. 1209; July 19, 1949, ch. 351, § 2, 63 Stat. 446; Oct. 25, 1949, ch. 729, § 4, 63 Stat. 906; April 20, 1950, ch. 94, title V, § 506, 64 Stat. 81; Oct. 24, 1951, ch. 555, § 101, 65 Stat. 616; Reorg. Plan No. 1 of 1951, §§ 1, 5, 9, eff. May 1, 1951, 16 F.R. 3690, 65 Stat. 773, 774; July 30, 1953, ch. 282, title I, § 102(b), 67 Stat. 230, related to loans and advances by the Corporation. It was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 648, 654.

Section 604a, act Jan. 20, 1934, ch. 3, § 2, 48 Stat. 319, related to time limitation in disbursement of funds committed by the Corporation. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(l), 61 Stat. 208.

Section 604b, act Jan. 31, 1935, ch. 2, § 2, 49 Stat. 2, related to limitation on disbursement of funds under commitment. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(m), 61 Stat. 208, as amended May 27, 1948, ch. 334, § 6, 62 Stat. 265.

Section 605, acts Jan. 22, 1932, ch. 8, § 5, 47 Stat. 8; May 20, 1933, ch. 35, § 2, 48 Stat. 73; June 19, 1934, ch. 653, § 2, 48 Stat. 1107; Sept. 18, 1940, ch. 722, title III, § 331(a), (b), 54 Stat. 955; June 30, 1947, ch. 166, title I, § 1, title II, § 206(a), (e), 61 Stat. 202, 208, authorizing and directing the Federal Reserve banks to act as custodians and fiscal agents for the Corporation, was omitted from the Code in view of abolition of the Corporation by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 605a, act July 21, 1932, ch. 520, § 1, 47 Stat. 709, related to loans to States and municipalities for unemployment relief purposes. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(a), 61 Stat. 208.

Section 605b, acts July 21, 1932, ch. 520, § 201, 47 Stat. 711; Mar. 23, 1933, ch. 5, 48 Stat. 20; Ex. Ord. No. 6084, May 27, 1933; May 29, 1933, ch. 42, title I, 48 Stat. 99; June 10, 1933, ch. 55, §§ 5-9, 48 Stat. 120, 121; June 16, 1933, ch. 98, § 80, 48 Stat. 273; June 16, 1933, ch. 100, § 5, 48 Stat. 283, authorized loans to States, municipalities, etc., for self-liquidating projects. Subsecs. (a) to (d) and (f) to (j) were repealed by act June 30, 1947, ch. 166, title II, § 206 (a) and (e), 61 Stat. 208.

Subsec. (e) was omitted from the Code insofar as act June 30, 1947, ch. 166, title II, § 206, 61 Stat. 208 (12

U.S.C. 1148) transferred functions of the Reconstruction Finance Corporation to the Farm Credit Administration and in view of abolition of the Corporation by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 605c, act July 21, 1932, ch. 520, § 206, 47 Stat. 714, authorized loans to borrowers organized under laws of Alaska, District of Columbia, Hawaii and Puerto Rico. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(a), 61 Stat. 208.

Section 605d, act July 21, 1932, ch. 520, § 207, 47 Stat. 715, prohibited loans to financial institutions whose officers or directors are also directors of Reconstruction Finance Corporation. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(a), 61 Stat. 208.

Section 605e, acts June 10, 1933, ch. 55, § 1, 48 Stat. 119; Jan. 31, 1935, ch. 2, § 8, 49 Stat. 4, related to purchase of preferred stock of insurance companies. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(e), 61 Stat. 208.

Sections 605f, 605g, acts June 10, 1933, ch. 55, §§ 2, 3, 48 Stat. 120; June 19, 1934, ch. 653, § 12(a), 48 Stat. 1111, which related to loans or purchases of capital notes of insurance companies, and the financial showing necessary for the purchase of stock or making of loans, were repealed by act of June 30, 1947, ch. 166, title II, § 206(e), 61 Stat. 208.

Section 605h, act June 10, 1933, ch. 55, § 4, 48 Stat. 120, prohibited the making of loans to applicants whose officers or employees were receiving unreasonable compensation. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(e), 61 Stat. 208.

Sections 605i, acts June 10, 1933, ch. 55, § 11, 48 Stat. 121; June 19, 1934, ch. 653, § 12(b), 48 Stat. 1112, defined insurance company and State.

Section 605j, act June 10, 1933, ch. 55, § 14, 48 Stat. 122, reserved right to amend or repeal former sections 605e to 605i of this title and provided for separability of their provisions. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(e), 61 Stat. 208.

Section 605k, acts Apr. 13, 1934, ch. 121, 48 Stat. 589; July 26, 1935, ch. 421, 49 Stat. 505; Apr. 17, 1936, ch. 234, § 1, 49 Stat. 1232, authorizing the Reconstruction Finance Corporation to make loans for repair of damage caused by floods and other catastrophes, was omitted from the Code in view of the abolition of the Corporation by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 605k-1, acts Feb. 11, 1937, ch. 10, 50 Stat. 19; May 28, 1937, ch. 275, 50 Stat. 211; Mar. 3, 1938, ch. 40, 52 Stat. 84; Mar. 4, 1939, ch. 4, 53 Stat. 510; June 10, 1941, ch. 190, § 1, 55 Stat. 248, related to the creation and powers of the Disaster Loan Corporation and was rendered obsolete by Joint Res. June 30, 1945, ch. 215, § 1, 59 Stat. 310, which dissolved the Corporation and transferred all powers, functions, duties, liabilities, etc., to the Reconstruction Finance Corporation. Section 2 of Joint Res. June 30, 1945, saved all pending court or other proceedings and provided that the Court could, upon motion filed within one year after July 1, 1945, substitute the Reconstruction Finance Corporation for the Disaster Loan Corporation. Section 3 of Joint Res. June 30, 1945, provided that it should become effective July 1, 1945. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(r), 61 Stat. 209.

Section 605*l*, act Jan. 31, 1935, ch. 2, § 11, 49 Stat. 5, related to substitution of bonds or other evidence of indebtedness held by the Corporation. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(m), 61 Stat. 208.

Section 605m, acts Jan. 31, 1935, ch. 2, § 3, 49 Stat. 2; June 25, 1940, ch. 427, § 3(b), 54 Stat. 573; Sept. 18, 1940, ch. 722, title III, § 331(c), 54 Stat. 956, related to maturity of loans made by the Corporation generally and to railroads in particular. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(m), 61 Stat. 208, as amended May 25, 1948, ch. 334, § 6, 62 Stat. 265.

Section 606, acts Jan. 22, 1932, ch. 8, § 7, 47 Stat. 8; June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202, authorizing the Reconstruction Finance Corporation to issue notes, bonds, etc., was omitted from the Code in view of the abolition of the Corporation by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. A prior section 606, act Jan. 22, 1932, ch. 8, § 5a, 47 Stat. 8, was omitted in the general revision of act Jan. 22, 1932, by act June 30, 1947, ch. 166. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 606a, act Jan. 22, 1932, ch. 8, § 5e, as added June 16, 1934, ch. 546, § 3, 48 Stat. 971; Jan. 31, 1935, ch. 2, § 6, 49 Stat. 3, which related to loans on or purchase of assets of closed financial institutions, omitted from Code in view of the fact that act June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5, omitted section 5e of act Jan. 22, 1932.

Section 606b, act Jan. 22, 1932, ch. 8, § 5d, as added June 19, 1934, ch. 653, § 5, 48 Stat. 1108, and amended Jan. 31, 1935, ch. 2, § 10, 49 Stat. 4; Apr. 13, 1938, ch. 140, 52 Stat. 212; June 25, 1940, ch. 427, §§ 5, 6(c), 54 Stat. 573, 574; Sept. 26, 1940, ch. 734, § 1, 54 Stat. 961; June 10, 1941, ch. 190, § 4, 55 Stat. 249; June 11, 1942, ch. 404, § 9, 56 Stat. 355, which provided for loans to States, municipalities, public agencies, and business enterprises, omitted from Code in view of the fact that act June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5, omitted section 5d of act Jan. 22, 1932. Act June 30, 1947, ch. 166, title II, § 206(x), (z), 61 Stat. 209, repealed acts Mar. 27, 1942, ch. 198, § 1, 56 Stat. 174; Aug. 7, 1946, ch. 811, § 1, 60 Stat. 901 formerly cited to section 606b of this title.

Section 606b-1, act Jan. 22, 1932, ch. 8, § 5f, as added Mar. 27, 1942, ch. 198, § 2, 56 Stat. 175, related to transfer of real estate to Corporation by Government agencies. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(x), 61 Stat. 209.

Section 606b-2, act Jan. 22, 1932, ch. 8, § 5g, as added Mar. 27, 1942, ch. 198, § 2, 56 Stat. 175, related to funds for the War Damage Corporation. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(x), 61 Stat. 209.

Section 606b-3, act Jan. 22, 1932, ch. 8, § 5h, as added May 11, 1942, ch. 301, 56 Stat. 275, omitted from Code in view of the fact that act June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5, omitted section 5h of act Jan 22, 1932.

Section 606b-4, act Aug. 7, 1946, ch. 811, § 2, 60 Stat. 902, related to purchase of servicemen's guaranteed or insured readjustment loans. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(z), 61 Stat. 209.

Section 606b-5, act Aug. 7, 1946, ch. 811, § 3, 60 Stat. 902, authorizing the extension of credit by the Reconstruction Finance Corporation to the Republic of the Philippines, was omitted from the Code in view of the abolition of the Corporation by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 606c, act June 19, 1934, ch. 653, § 13, 48 Stat. 1112, related to loans for organizing farmers' mineral rights pools. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(k), 61 Stat. 208.

Section 606d, acts June 19, 1934, ch. 653, § 14, 48 Stat. 1112; Jan. 31, 1935, ch. 2, § 12, 49 Stat. 5; Sept. 16, 1940, ch. 721, 54 Stat. 897, related to loans to aid mining, milling and smelting industry. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(k), 61 Stat. 208.

Section 606e, act June 19, 1934, ch. 653, § 15, 48 Stat. 1112, related to loans to aid fishing industry. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(k), 61 Stat. 208.

Section 606f, act June 19, 1934, ch. 653, § 16, 48 Stat. 1113, related to loans for payment of teachers' salaries due prior to June 1, 1934. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(k), 61 Stat. 208.

Section 606g, act Jan. 22, 1932, ch. 8, § 5b, as added June 19, 1934, ch. 653, § 8, 48 Stat. 1109, omitted from Code in view of the fact that act June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5, omitted section 5b of act Jan. 22, 1932.

Section 606h, act June 19, 1934, ch. 653, § 10, 48 Stat. 1110, related to adjustment of maturities of obligations of borrowers. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(k), 61 Stat. 208.

Section 606i, act Jan. 22, 1932, ch. 8, § 5c, as added Jan. 31, 1935, ch. 2, § 5, 49 Stat. 3, omitted from Code in view of the fact that act June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5, omitted section 5c of act Jan. 22, 1932.

Section 606j, act Aug. 24, 1935, ch. 646, § 1, 49 Stat. 796, related to loans to public school districts and authorities. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(n), (u), 61 Stat. 208, 209.

Section 606k, act Aug. 24, 1935, ch. 646, § 2, 49 Stat. 798, related to limitation of loans authorized by former section 606j of this title. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(n), (u), 61 Stat. 208, 209.

Section 606*l*, act Sept. 5, 1940, ch. 715, § 12, 54 Stat. 871, related to financing acquisition of right-of-way for Federal aid roads. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(n), (u), 61 Stat. 208, 209.

Section 607, acts Jan. 22, 1932, ch. 8, § 8, 47 Stat. 8; July 21, 1932, ch. 520, § 204, 47 Stat. 714; Ex. Ord. No. 6084, Mar. 27, 1933; Aug. 23, 1935, ch. 614, § 203(a), 49 Stat. 704; June 30, 1947, ch. 166, title I, § 1, title II, § 206(a), 61 Stat. 202, 208; May 25, 1948, ch. 334, § 5, 62 Stat. 265, exempting the Reconstruction Finance Corporation from all federal and local taxation except on real property, was omitted from the Code in view of the abolition of the Corporation by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 607a, act Jan. 31, 1935, ch. 2, § 13, 49 Stat. 5, related to use of receipts from sale of securities. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(m), 61 Stat. 208.

Section 608, acts Jan. 22, 1932, ch. 8, § 9, 47 Stat. 9; July 21, 1932, ch. 520, § 204, 47 Stat. 714; Mar. 4, 1939, ch. 4, 53 Stat. 510; June 30, 1947, ch. 166, title I, § 1, title II, § 206(a), 61 Stat. 202, 208; 1951 Reorg. Plan No. 1, §§ 1, 5, 9, eff. May 1, 1951, 16 F.R. 3690, 65 Stat 773, 774, providing for the possible premature liquidation of the Reconstruction Finance Corporation, was omitted from the Code in view of the abolition of the Corporation by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 609, acts Jan. 22, 1932, ch. 8, § 10, 47 Stat. 9; July 21, 1932, ch. 520, § 209, 47 Stat. 715; June 10, 1941, ch. 190, § 3, 55 Stat. 248; June 30, 1947, ch. 166, title I, § 1, title II, § 206(a), 61 Stat. 202, 208; 1951 Reorg. Plan No. 1, §§ 1, 5, 9, eff. May 1, 1951, 16 F.R. 3690, 65 Stat. 773, 774; June 29, 1954, ch. 410, § 2(a), 68 Stat. 320, transferring from the Administrator to the Secretary of the Treasury the duty of completing the liquidation of the Reconstruction Finance Corporation after June 30, 1954, was omitted from the Code in view of the abolition of the Corporation by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 609a, act July 21, 1932, ch. 520, § 205(a), 47 Stat. 714, increased the amount of obligations the Corporation could have outstanding, to six and three-fifths times its capital stock. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(a), 61 Stat. 208.

Section 609a-1, act June 22, 1946, ch. 445, § 1, 60 Stat. 294, was from the Department of Agriculture Appropriation Act, 1947, and increased by $50,000,000 the amount of obligations the Corporation could issue or have outstanding.

Section 609b, act June 16, 1933, ch. 90, title III, § 302, 48 Stat. 210, decreased by $400,000,000 the amount of obligations the Corporation could have outstanding. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(c), 61 Stat. 208.

Section 609b-1, formerly 609bb, act Jan. 20, 1934, ch. 3, § 3, 48 Stat. 319, increased by $850,000,000 the amount of obligations the Corporation could have outstanding. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(g), 61 Stat. 208.

Section 609c, act May 12, 1933, ch. 25, title II, § 38, 48 Stat. 50, increased by $300,000,000 the amount of obligations the Corporation could have outstanding, to provide funds for agricultural credits. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(i), 61 Stat. 208.

Section 609c-1, act May 12, 1933, ch. 30, § 2(b), 48 Stat. 56, increased by $500,000,000 the Corporation's authority to issue notes, debentures, etc.

Section 609d, act June 19, 1934, ch. 648, title II, § 1, 48 Stat. 1056; Reorg. Plan No. 1 of 1939, §§ 301, 305, eff. July 1, 1939, 4 F.R. 2729, 2730, 53 Stat. 1426, 1428, increased by $250,000,000 the amount of obligations the Corporation could have outstanding, to purchase securities from the Public Works Administration. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(j), 61 Stat. 208.

Section 609e, act June 29, 1937, 11 p.m., ch. 401, § 202, 50 Stat. 357; Reorg. Plan No. I of 1939, §§ 301, 305, eff. July 1, 1939, 4 F.R. 2729, 2730, 53 Stat. 1426, 1428, increased to $400,000,000 the amount the Corporation could invest in securities purchased from the Public Works Administration. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(j), 61 Stat. 208.

Section 609f, act Feb. 24, 1938, ch. 32, § 2, 52 Stat. 80, reduced the amount of outstanding obligations authorized under former section 611a of this title, by the amount of notes authorized to be cancelled pursuant to section. Section was not enacted as a part of the Reconstruction Finance Corporation Act which comprises this chapter.

Section 609g, act June 25, 1940, ch. 421, § 1, 54 Stat. 565, authorized an additional $50,000,000.

Section 609h, act June 25, 1940, ch. 421, § 1, 54 Stat. 567, authorized an additional $100,000,000.

Section 609i, act June 26, 1940, ch. 432, § 2(c), 54 Stat. 614, authorized Corporation to advance to Secretary of Agriculture upon his request an amount not to exceed $125,000,000.

Section 609j, act Jan. 22, 1932, ch. 8, § 5d, as added June 19, 1934, ch. 653, § 5, 48 Stat. 1108, and amended Sept. 26, 1940, ch. 734, § 2, 54 Stat. 962, authorized an additional $1,500,000,000. The section was omitted from Code in view of the fact that act June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5, omitted section 5d of act Jan. 22, 1932.

Section 609k, act June 27, 1934, ch. 847, title VI, § 602, as added Mar. 28, 1941, ch. 31, 55 Stat. 55, authorized an additional amount of $10,000,000 to be used for the Defense Housing Insurance Fund. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(*l*), 61 Stat. 208.

Sections 609*l*, 609m, and 609n, act July 1, 1941, ch. 267, § 1, 55 Stat. 439, 440, 442, authorized an additional $270,000,000.

Section 609*o*, act June 10, 1941, ch. 190, § 5, 55 Stat. 250, authorized an additional $1,500,000,000. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(v), 61 Stat. 209.

Section 609p, act Oct. 23, 1941, ch. 454, 55 Stat. 744, authorized an additional $1,500,000,000. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(w), 61 Stat. 209.

Section 609q, act Mar. 27, 1942, ch. 198, § 3, 56 Stat. 176, authorized an additional $2,500,000,000. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(x), 61 Stat. 209.

Section 609r, act June 5, 1942, ch. 352, 56 Stat. 326, authorized an additional $5,000,000,000. It was repealed by act of June 30, 1947, ch. 166, title II, § 206(y), 61 Stat. 209.

Sections 609s to 609u, act July 22, 1942, ch. 516, § 1, 56 Stat. 695, 697, 698, authorized an additional $140,000,000.

Section 609v, acts July 12, 1943, ch. 215, § 1, 57 Stat. 426; June 28, 1944, ch. 296, § 1, 58 Stat. 456; May 5, 1945, ch. 109, § 1, 59 Stat. 160, authorized an indefinite amount to carry out certain provisions of section.

Section 609w, acts July 12, 1943, ch. 215, § 1, 57 Stat. 428; June 28, 1944, ch. 296, § 1, 58 Stat. 457, authorized an additional $15,000,000.

Section 609x, act June 28, 1944, ch. 296, § 1, 58 Stat. 458, authorized an additional $25,000,000.

Section 609y, act May 5, 1945, ch. 109, § 1, 59 Stat. 162, authorized an additional $50,000,000.

Section 609z, act June 22, 1946, ch. 445, § 1, 60 Stat. 293, authorized an additional $70,000,000.

Section 610, acts Jan. 22, 1932, ch. 8, § 11, 47 Stat. 10; June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202; June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202, relating to penalties for false statements, etc., is now covered by sections 493, 657, 709, 1006, 1014, and 1904 of Title 18, Crimes and Criminal Procedure. It was repealed by act of May 24, 1949, ch. 139, § 142, 63 Stat. 109.

Section 611, acts Jan. 22, 1932, ch. 8, § 12, 47 Stat. 10; June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202, authorizing the Reconstruction Finance Corporation to exercise functions, powers, etc., of certain dissolved corporations, was omitted from the Code in view of abolition of the Corporation by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 611a, act Feb. 24, 1938, ch. 32, § 1, 52 Stat. 79, providing for the cancellation of notes of the Reconstruction Finance Corporation by the Secretary of the Treasury, was omitted from the Code in view of abolition of the Corporation by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 611a-1, act Jan. 31, 1942, ch. 30, 56 Stat. 40, which related to the disposition by the Secretary of the Treasury of county, municipal, and other securities transferred from the Reconstruction Finance Corporation, was omitted from the Code in view of the abolition of the Corporation by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 611b, act Feb. 24, 1938, ch. 32, § 3, 52 Stat. 80, which related to the transfer of repayments or recoveries to the general fund of the Treasury, was omitted from the Code in view of the abolition of the Corporation by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

Section 612, act Jan. 22, 1932, ch. 8, § 12, 47 Stat. 10, authorized the Corporation to be a depositary of public moneys, and was not covered in act June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5.

Section 613, act Jan. 22, 1932, ch. 8, § 13, 47 Stat. 10, provided for the liquidation of the Corporation by the directors, and was covered by section 9 of act Jan. 22, 1932, as amended by act June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202, and set out as section 608 of this title.

Sections 613a, 613b, acts Jan. 20, 1934, ch. 3, § 1, 48 Stat. 318; Jan. 31, 1935, ch. 2, § 1, 49 Stat. 1 which, extended the time for liquidation of the Corporation pursuant to former section 613 of this title, were repealed by act of June 30, 1947, ch. 166, title II, § 206(i), (m), 61 Stat. 208.

Section 613c, acts Jan. 26, 1937, ch. 6, § 1, 50 Stat. 5; Mar. 4, 1939, ch. 4, 53 Stat. 510; June 25, 1940, ch. 427, § 6(a), 54 Stat. 574, further extended the time for liquidation of the Corporation and provided for suspension of lending authority by districts. Act Aug. 7, 1946, ch. 811, § 1, 60 Stat. 901, which also amended act Jan. 26, 1937, was repealed by act June 30, 1947, ch. 166, title II, § 206(q), (z), 61 Stat. 209.

Section 614, acts Jan. 22, 1932, ch. 8, § 14, 47 Stat. 10; June 25, 1940, ch. 427, § 6(b), 54 Stat. 574, relating to completion of liquidation of the Corporation by Secretary of Treasury, was omitted from Code in view of the fact that act June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5, omitted section 14 of the act. Act Aug. 7, 1946, ch. 811, § 1, 60 Stat. 901, which also amended section 14 of act Jan. 22, 1932, was repealed by section 206(z) of act June 30, 1947.

Section 615, act Jan. 22, 1932, ch. 8, § 15, 47 Stat. 11, relating to reports to Congress, omitted from Code in view of the fact that act June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5, omitted section 15 of act Jan. 22, 1932.

Section 616, act Jan. 22, 1932, ch. 8, § 16, 47 Stat. 11, related to false statements, forgery, embezzlement, and use of words "Reconstruction Finance Corporation", and is now covered by sections 433, 493, 657, 709, 1006, 1014, and 1904 of Title 18, Crimes and Criminal Procedure.

§ 616a. Transferred

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Section 616a, acts Mar. 26, 1934, ch. 90, 48 Stat. 500; June 29, 1936, ch. 858, title II, § 204, 49 Stat. 1987, which related to the shipment of exports financed by the Government in United States vessels, was transferred to section 1241-1 of Title 46, Shipping.

§§ 617 to 619. Repealed or omitted

Section 617, act Jan. 22, 1932, ch. 8, § 17, 47 Stat. 12, omitted from Code in view of the fact that act June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5, omitted section 17 of act Jan. 22, 1932.

Section 618, act June 30, 1947, ch. 166, title II, § 208, 62 Stat. 209, related to purchase and sale of surplus property, and is not now covered. It was repealed by act of May 25, 1948, ch. 334, § 7, 62 Stat. 265.

Section 619, act July 29, 1947, ch. 346, title II, § 201, 61 Stat. 515, which related to limitations on use of funds of the Corporation, was omitted from the Code in view of the abolition of the Corporation by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 FR 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

CHAPTER 14A—AID TO SMALL BUSINESS

Sec.

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636a. Small business disaster loans.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 662, 687 of this title; title 12 section 371; title 16 section 472a; title 19 sections 2345, 2346; title 42 section 5031; title 50 App. section 2017*l*.

§ 631. Declaration of policy

(a) Aid, counsel, assistance, etc., to small business concerns

The essence of the American economic system of private enterprise is free competition.

Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.

(b) Aid for agriculturally related industries; financial assistance

It is the declared policy of the Congress that the Government, through the Small Business Administration, should aid and assist small business concerns which are engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries; and the financial assistance programs authorized by this chapter are also to be used to assist such concerns.

(c) Use of assistance programs to establish, preserve, and strengthen small business concerns

The assistance programs authorized by sections 636(i) and 636(j) of this title are to be utilized to assist in the establishment, preservation, and strengthening of small business concerns and improve the managerial skills employed in such enterprises, with special attention to small business concerns (1) located in urban or rural areas with high proportions of unemployed or low-income individuals; or (2) owned by low-income individuals; and to mobilize for these objectives private as well as public managerial skills and resources.

(d) Assistance to victims of floods, etc., and those displaced as result of federally aided construction programs

Further, it is the declared policy of the Congress that the Government should aid and assist victims of floods and other catastrophes, and small-business concerns which are displaced as a result of federally aided construction programs.

(Pub. L. 85-536, § 2[2], July 18, 1958, 72 Stat. 384; Pub. L. 87-70, title III, § 305(b), June 30, 1961, 75 Stat. 167; Pub. L. 87-305, § 6, Sept. 26, 1961, 75 Stat. 667; Pub. L. 93-386, § 2(a)(1), Aug. 23, 1974, 88 Stat. 742; Pub. L. 94-305, title I, § 112(a), June 4, 1976, 90 Stat. 667.)

Codification

This chapter was originally enacted as title II of act July 30, 1953, ch. 282, 67 Stat. 232, and designated as the "Small Business Act of 1953". Title II of act July 30, 1953, was amended by acts June 30, 1955, ch. 251, § 4, 69 Stat. 225; Aug. 9, 1955, ch. 628, 69 Stat. 547; Feb. 2, 1956, ch. 29, §§ 1, 2, 70 Stat. 10; Pub. L. 85-4, §§ 1, 2, Feb. 11, 1957, 71 Stat. 1; Pub. L. 85-120, §§ 1, 2, Aug. 3, 1957, 71 Stat. 341; Pub. L. 85-335, Feb. 22, 1958, 72 Stat. 27. Section 1 of Pub. L. 85-536 withdrew title II of act July 30, 1953, as part of that act, and made title II a separate act to be known as the "Small Business Act". The Small Business Act, as amended by Pub. L. 85-536, is classified to this chapter.

Amendments

1976—Subsecs. (b) to (d). Pub. L. 94-305 added subsec. (b) and redesignated subsecs. (b) and (c) as (c) and (d), respectively.

1974—Subsec. (b). Pub. L. 93-386 added subsec. (b). Former subsec. (b) was redesignated (c).

Subsec. (c). Pub. L. 93-386 redesignated former subsec. (b) as (c).

1961—Subsec. (a). Pub. L. 87-305 inserted "or subcontracts" following "contracts" in two instances.

Subsec. (b). Pub. L. 87-70 included small-business concerns which are displaced as a result of federally aided construction programs.

Short Title of 1974 Amendment

Section 1 of Pub. L. 93-386 provided: "That this Act [which enacted section 694c of this title, amended this section, sections 633, 634, 636, 639, 647, 694, and 694b of this title, and sections 2855, 2942, 2949, and 2982 of Title 42, The Public Health and Welfare, repealed sections 2901, 2902, 2905, 2906, 2906a, 2906b, 2906c, and 2907 of title 42, and enacted provisions set out as notes under sections 633 and 694 of this title] may be cited as the 'Small Business Amendments of 1974'."

Short Title of 1967 Amendment

Section 101 of Pub. L. 90-104, title I, Oct. 11, 1967, 81 Stat. 268, provided that: "This title [which amended sections 633, 636, and 637 of this title and section 2902 of Title 42, The Public Health and Welfare] may be cited as the 'Small Business Act Amendments of 1967'."

Short Title of 1961 Amendment

Section 1 of Pub. L. 87-305 provided: "That this Act [amending this section and sections 633, 634, 636, 637, and 639 of this title, and section 2158 of Appendix to Title 50, War and National Defense] may be cited as the 'Small Business Act Amendments of 1961'."

Short Title

Section 2[1] of Pub. L. 85-536 provided that this chapter should be known as the "Small Business Act".

Repeal of Inconsistent Laws

Section 2[21] of Pub. L. 85-536 provided that: "All laws and parts of laws inconsistent with this Act [this chapter] are hereby repealed to the extent of such inconsistency."

Separability of Provisions

Section 2[19] of Pub. L. 85-536 provided that: "If any provision of this Act [this chapter], or the application thereof to any person or circumstances, is held invalid, the remainder of this Act [this chapter], and the application of such provision to other persons or circumstances, shall not be affected thereby."

Appropriations

Section 2[20] of Pub. L. 85-536, as amended by Pub. L. 87-341, § 11(h)(2), Oct. 3, 1961, 75 Stat. 757, provided that: "There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes of this Act [this chapter] other than those for which appropriations to the revolving fund are authorized by section 4(c) [section 633(c) of this title]."

Executive Order No. 11458

Ex. Ord. No. 11458, Mar. 5, 1969, 34 F.R. 4937, formerly set out as a note under this section, which related to a national program for minority business enterprise, was superseded by Ex. Ord. No. 11625, Oct. 13, 1971, 36 F.R. 19967, set out as a note under this section.

Ex. Ord. No. 11625. National Program for Minority Business Enterprise

Ex. Ord. No. 11625, Oct. 13, 1971, 36 F.R. 19967, provided:

The opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic justice for such persons and improve the functioning of our national economy.

The Office of Minority Business Enterprise, established in 1969, greatly facilitated the strengthening and expansion of our minority enterprise program. In order to take full advantage of resources and opportunities in the minority enterprise field, we now must build on this foundation. One important way of improving our efforts is by clarifying the authority of the Secretary of Commere (a) to implement Federal policy in support of the minority business enterprise program; (b) provide additional technical and management assistance to disadvantaged business; (c) to assist in demonstration projects; and (d) to coordinate the participation of all Federal departments and agencies in an increased minority enterprise effort.

Now, Therefore, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

Section 1. *Functions of the Secretary of Commerce.* (a) The Secretary of Commerce (hereinafter referred to as "the Secretary") shall—

(1) Coordinate as consistent with law the plans, programs, and operations of the Federal Government which affect or may contribute to the establishment, preservation, and strengthening of minority business enterprise.

(2) Promote the mobilization of activities and resources of State and local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the growth of minority business enterprises, and facilitate the coordination of the efforts of these groups with those of Federal departments and agencies.

(3) Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the Nation in undertaking or promoting the establishment and successful operation of minority business enterprise.

(4) Within constraints of law and appropriations therefor, and according to his discretion, provide financial assistance to public and private organizations so that they may render technical and management assistance to minority business enterprises, and defray all or part of the costs of pilot or demonstration projects conducted by public or private agencies or organizations which are designed to overcome the special problems of minority business enterprises or otherwise to further the purposes of this order.

(b) The Secretary, as he deems necessary or appropriate to enable him to better fulfill the responsibilities vested in him by subsection (a), may—

(1) With the participation of other Federal departments and agencies as appropriate, develop comprehensive plans and specific program goals for the minority enterprise program; establish regular performance monitoring and reporting systems to assure that goals are being achieved; and evaluate the impact of Federal support in achieving the objectives established by this order.

(2) Require a coordinated review of all proposed Federal training and technical assistance activities in direct support of the minority enterprise program to assure consistency with program goals and to avoid duplication.

(3) Convene, for purposes of coordination, meetings of the heads of such departments and agencies, or their designees, whose programs and activities may affect or contribute to the purposes of this order.

(4) Convene business leaders, educators, and other representatives of the private sector who are engaged in assisting the development of minority business enterprise or who could contribute to its development, for the purpose of proposing, evaluating and coordinating governmental and private activities in furtherance of the objectives of this order.

(5) Confer with and advise officials of State and local governments.

(6) Provide the managerial and organizational framework through which joint or collaborative undertakings with Federal departments or agencies or private organizations can be planned and implemented.

(7) Recommend appropriate legislative or executive actions.

Sec. 2. *Advisory Council for Minority Enterprise.* (a) The Advisory Council for Minority Enterprise (hereinafter referred to as "the Council"), established by Executive Order No. 11458 of March 5, 1969, shall continue in existence under the terms of this order.

(b) The Council shall be composed of members appointed by the President from among persons, including members of minority groups and representatives from minority business enterprises, who are knowledgeable in this field and who are dedicated to the purposes of this order. The members shall serve for a term of two years and may be reappointed.

(c) The President shall designate one of the members of the Council as the Chairman of the Council.

(d) The Council shall meet at the call of the Secretary.

(e) The Council shall be advisory to the Secretary in which capacity it shall—

(1) Serve as a source of knowledge and information on developments in different fields and segments of our economic and social life which affect minority business enterprise.

(2) Keep abreast of plans, programs, and activities in the public and private sectors which relate to minority business enterprise, and advise the Secretary on any measures to better achieve the objectives of this order.

(3) Consider, and advise the Secretary, and such officials as he may designate, on problems and matters referred to the Council.

(f) For the purposes of Executive Order No. 11007 of February 26, 1962 [set out as a note under section 901 of Title 5, Government Organization and Employees], the Council shall be deemed to have been formed by the Secretary.

(g) Members of the Council shall be entitled to receive travel and expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5701-5708) for persons in the Government service employed intermittently.

(h) The Secretary shall arrange for administrative support of the Council to the extent necessary, including use of any gifts or bequests accepted by the Department of Commerce pursuant to law.

Sec. 3. *Responsibilities of Other Federal Departments and Agencies.* (a) The head of each Federal department and agency, or a representative designated by him, when and in the manner so requested by the Secretary, shall furnish information, assistance, and reports to, and shall otherwise cooperate with, the Secretary in the performance of his functions hereunder.

(b) The head of each Federal department or agency shall, when so requested by the Secretary, designate his Under Secretary or such other similar official to have primary and continuing responsibility for the participation and cooperation of that department or agency in matters concerning minority business enterprise.

(c) The officials designated under the preceding paragraph, when so requested, shall review and report to the Secretary upon the policies and programs of the minority business enterprise program, and shall keep the Secretary informed of all proposed budgets, plans and programs of his department or agency affecting minority business enterprise.

(d) The head of each Federal department or agency, or a representative designated by him, shall, to the extent provided under regulations issued by the Secretary after consultation with the official designated in paragraph (b) above, report to the Secretary on any activity that falls within the scope of the minority business enterprise program as defined herein and in those regulations.

(e) Each Federal department or agency shall, within constraints of law and appropriations therefor, continue all current efforts to foster and promote minority business enterprises and to support the program herein set forth, and shall cooperate with the Secretary of Commerce in increasing the total Federal effort.

Sec. 4. *Reports.* The Secretary shall, not later than 120 days after the close of each fiscal year, submit to the President a full report of his activities hereunder during the previous fiscal year. Further, the Secretary shall, from time to time, submit to the President his recommendations for legislation or other action as he deems desirable to promote the purposes of this order. Each Federal department or agency shall report to the Secretary as hereinabove provided on a timely basis so that the Secretary may consider such reports for his report and recommendations to the President. Each Federal department or agency shall develop and implement systematic data collection processes which will provide to the Office of Minority Business Enterprise Information Center current data helpful in evaluating and promoting the efforts herein described.

Sec. 5. *Policies and Standards.* The Secretary may establish such policies, standards, definitions, criteria, and procedures to govern the implementation, interpretation, and application of this order, and generally perform such functions and take such steps as he may deem to be necessary or appropriate to achieve the purposes and carry out the provisions hereof.

Sec. 6. *Definitions.* For purposes of this order, the following definitions shall apply:

(a) "Minority business enterprise" means a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, Negroes, Puerto Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts.

(b) "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

Sec. 7. *Construction.* Nothing in this order shall be construed as subjecting any function vested in, or assigned pursuant to law to, any Federal department or agency or head thereof to the authority of any other agent or office exclusively, or as abrogating or restricting any such function in any manner.

Sec. 8. *Prior Executive Order.* Executive Order No. 11458 of March 5, 1969, is hereby superseded.

Richard Nixon.

EXTENSION OF TERM OF ADVISORY COUNCIL FOR MINORITY ENTERPRISE

Term of the Advisory Council for Minority Enterprise extended until Dec. 31, 1978, see Ex. Ord. No. 11948, Dec. 20, 1976, 41 F.R. 55705, set out as a note under section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, Title 5, Appendix, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 636 of this title; title 12 section 635.

§ 632. Definition of small-business concern

For the purposes of this chapter, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries, shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation. In addition to the foregoing criteria the Administrator, in making a detailed definition, may use these criteria, among others: Number of employees and dollar volume of business. Where the number of employees is used as one of the criteria in making such definition for any of the purposes of this chapter, the maximum number of employees which a small-business concern may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and to take proper account of other relevant factors.

(Pub. L. 85-536, § 2[3], July 18, 1958, 72 Stat. 384; Pub. L. 94-305, title I, § 112(b), June 4, 1976, 90 Stat. 667.)

CODIFICATION

Prior similar provisions were contained in section 203 of act July 30, 1953, ch. 282, title II, 67 Stat. 233, which was previously classified to this section. See Codification note under section 631 of this title.

AMENDMENTS

1976—Pub. L. 94-305 inserted reference to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries.

§ 633. Small Business Administration

(a) Creation; principal, branch, and regional offices

In order to carry out the policies of this chapter there is created an agency under the name "Small Business Administration" (herein referred to as the Administration), which Administration shall be under the general direction and supervision of the President and shall not be affiliated with or be within any other agency or department of the Federal Government. The principal office of the Administration shall be located in the District of Columbia. The Administration may establish such branch and regional offices in other places in the United States as may be determined by the Administrator of the Administration. As used in this chapter, the term "United States" includes the several States, the Territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

(b) Appointment of Administrator, Deputy Administrator, and Associate Administrators

The management of the Administration shall be vested in an Administrator who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and who shall be a person of outstanding qualifications known to be familiar and sympathetic with small-business needs and problems. The Administrator shall not engage in any other business, vocation, or employment than that of serving as Administrator. In carrying out the programs administered by the Small Business Administration including its lending and guaranteeing functions, the Administrator shall not discriminate on the basis of sex or marital status against any person or small business concern applying for or receiving assistance from the Small Business Administration, and the Small Business Administration shall give special consideration to veterans of the Armed Forces of the United States and their survivors or dependents. The Administrator is authorized to appoint a Deputy Administrator and four Associate Administrators (including the Associate Administrator specified in section 671 of this title) to assist in the execution of the functions vested in the Administration. One of the Associate Administrators shall be designated at the time of his appointment as the Associate Administrator for Minority Small Business and shall be responsible to the Administrator for the formulation of policy relating to the Administration's programs which provide assistance to minority small business concerns and in the review of the Administration's execution of such programs in light of such policy. The Deputy Administrator shall be Acting Administrator of the Administration during the absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator.

(c) Revolving funds; disaster loan fund; business loan and investment fund; payments into funds; appropriations: allocation of unexpended balances and authorizations; limitations; reports to Congress; business-type budgets; interest on disbursements

(1) There are hereby established in the Treasury the following revolving funds: (A) a disaster loan fund which shall be available for financing functions performed under sections 636(b)(1), 636(b)(2), 636(b)(4), 636(b)(5), 636(b)(6), 636(b)(7), 636(b)(8), 636(c)(2), and 636(g) of this title, including administrative expenses in connection with such functions; and (B) a business loan and investment fund which shall be available for financing functions performed under sections 636(a), 636(b)(3), 636(e), 636(h), 636(i), and 637(a) of this title, and titles III [15 U.S.C. 681 et seq.] and V [15 U.S.C. 695 et seq.] of the Small Business Investment Act of 1958, including administrative expenses in connection with such functions.

(2) All repayments of loans and debentures, payments of interest and other receipts arising out of transactions heretofore or hereafter entered into by the Administration (A) pursuant to sections 636(b)(1), 636(b)(2), 636(b)(4), 636(b)(5), 636(b)(6), 636(b)(7), 636(b)(8), and 636(c)(2) of this title, shall be paid into a disaster loan fund; and (B) pursuant to sections 636(a), 636(b)(3), 636(e), 636(h), 636(i), and 637(a) of this title, and titles III [15 U.S.C. 681 et seq.] and V [15 U.S.C. 695 et seq.] of the Small Business Investment Act of 1958, shall be paid into the business loan and investment fund.

(3) Unexpended balances of appropriations made to the fund pursuant to this subsection, as in effect immediately prior to the effective date of this paragraph, shall be allocated, together with related assets and liabilities, to the funds established by paragraph (1) in such amounts as the Administrator shall determine. In addition to any sums so allocated, appropriations are hereby authorized to be made to such funds, as capital thereof, in such amounts as may be necessary to carry out the functions of the Administration, which appropriations shall remain available until expended.

(4) The total amount of loans, guarantees, and other obligations or commitments, heretofore or hereafter entered into by the Administration, which are outstanding at any one time (A) under sections 636(a), 636(b)(3), 636(e), 636(h), 636(i) and 637(a) of this title, shall not exceed $6,000,000,000; (B) under title III of the Small Business Investment Act of 1958 [15 U.S.C. 681 et seq.], shall not exceed $725,000,000; (C) under title V of the Small Business Investment Act of 1958 [15 U.S.C. 695 et seq.], shall not exceed $525,000,000; and (D) under section 636(i) of this title, shall not exceed $450,000,000.

(5) The Administration shall submit to the Committees on Appropriations and the Committees on Banking and Currency of the Senate and House of Representatives, as soon as possible after the beginning of each calendar quarter, a full and complete report on the status of each of the funds established by paragraph (1). If at the close of the preceding calendar quarter the aggregate amount outstanding or committed by the Administration in carrying out its functions under any of the sections or titles referred to in paragraph (4) exceeded 75 per centum of the total amount authorized to be outstanding or committed under such sections or titles, the Administration's report shall include its recommendations for such additional authority as it deems appropriate. Business-type budgets for each of the funds established by paragraph (1) shall be prepared, transmitted to the Congress, considered, and enacted in the manner prescribed by law (sections 847 to 849 of title 31) for wholly-owned Government corporations.

(6) The Administration shall pay into miscellaneous receipts of the Treasury, following the close of each fiscal year, interest on the outstanding cash disbursements from each of the funds established by paragraph (1) at rates determined by the Secretary of the Treasury, taking into consideration the current average yields on outstanding interest-bearing marketable public debt obligations of the United States of comparable maturities as calculated for the month of September preceding such fiscal year.

(d) Creation and composition of Loan Policy Board; establishment of policies

There is created the Loan Policy Board of the Small Business Administration, which shall consist of the following members, all ex officio: The Administrator, as Chairman, the Secretary of the Treasury, and the Secretary of Commerce. Either of the said Secretaries may designate an officer of his Department, who has been appointed by the President by and with the advice and consent of the Senate, to act in his stead as a member of the Loan Policy Board with respect to any matter or matters. The Loan Policy Board shall establish general policies (particularly with reference to the public interest involved in the granting and denial of applications for financial assistance by the Administration and with reference to the coordination of the functions of the Administration with other activities and policies of the Government), which shall govern the granting and denial of applications for financial assistance by the Administration.

(Pub. L. 85-536, § 2[4], July 18, 1958, 72 Stat. 384; Pub. L. 85-699, title II, § 202, formerly § 202(a), Aug. 21, 1958, 72 Stat. 690, renumbered Pub. L. 87-341, § 11(h)(1), Oct. 3, 1961, 75 Stat. 757, and amended Pub. L. 86-367, § 1, Sept. 22, 1959, 73 Stat. 647; Pub. L. 87-70, title III, § 305(c), June 30, 1961, 75 Stat. 167; Pub. L. 87-198, Sept. 5, 1961, 75 Stat. 468; Pub. L. 87-305, § 3, Sept. 26, 1961, 75 Stat. 666; Pub. L. 87-341, §§ 11(h)(3), (4), 12, Oct. 3, 1961, 75 Stat. 757; Pub. L. 87-550, § 1(a), July 25, 1962, 76 Stat. 220; Pub. L. 89-59, §§ 1(c), 2, June 30, 1965, 79 Stat. 207; Pub. L. 89-78, July 21, 1965, 79 Stat. 243; Pub. L. 89-117, title III, § 316(d), Aug. 10, 1965, 79 Stat. 484; Pub. L. 89-334, Nov. 8, 1965, 79 Stat. 1294; Pub. L. 89-409, §§ 1, 2, May 2, 1966, 80 Stat. 132; Pub. L. 89-779, § 8(a), (b), Nov. 6, 1966, 80 Stat. 1364; Pub. L. 90-104, title I, § 102, Oct. 11, 1967, 81 Stat. 268; Pub. L. 90-448, title XVII, § 1721, Aug. 1, 1968, 82 Stat. 610; Pub. L. 91-173, title V, § 504(c), Dec. 30, 1969, 83 Stat. 802; Pub. L. 91-558, title I, § 101, Dec. 17, 1970, 84 Stat. 1468; Pub. L. 91-596, § 28(c), Dec. 29, 1970, 84 Stat. 1618; Pub. L. 91-597, § 25(c), Dec. 29, 1970, 84 Stat. 1634; Pub. L. 92-16, May 18, 1971, 85 Stat. 39; Pub. L. 92-320, § 1, June 27, 1972, 86 Stat. 382; Pub. L. 92-385, § 2(b), Aug. 16, 1972, 86 Stat. 556; Pub. L. 92-500, § 8(b), Oct. 18, 1972, 86 Stat. 899; Pub. L. 92-595, § 3(a), Oct. 27, 1972, 86 Stat. 1316; Pub. L. 93-237, §§ 1, 3(b), 8, Jan. 2, 1974, 87 Stat. 1023-1025; Pub. L. 93-386, §§ 2(a)(2), (3), 7, Aug. 23, 1974, 88 Stat. 742, 748; Pub. L. 94-273, § 2(5), Apr. 21, 1976, 90 Stat. 375.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (c), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§ 661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables volume.

Title III of the Small Business Investment Act of 1958, referred to in subsecs. (c)(1), (2), and (4)(B), is classified to subchapter III (§ 681 et seq.) of chapter 14B of this title.

Title V of the Small Business Investment Act of 1958, referred to in subsecs. (c)(1), (2), and (4)(C), is classified to subchapter V (§ 695 et seq.) of chapter 14B of this title.

The effective date of this paragraph, referred to in subsec. (c)(3), is July 1, 1966, pursuant to Pub. L. 89-409, § 2.

Such titles, referred to in subsec. (c)(5), means titles III and V of the Small Business Investment Act of 1958.

CODIFICATION

Prior similar provisions were contained in section 204 of act July 30, 1953, ch. 282, title II, 67 Stat. 233, as amended by acts Aug. 9, 1955, ch. 628, § 3, 69 Stat. 547; Feb. 2, 1956, ch. 29, § 1, 70 Stat. 10; July 31, 1956, ch. 804, title I, §§ 106(a), 107(b), 70 Stat. 737; Pub. L. 85-4, §§ 1, 2, Feb. 11, 1957, 71 Stat. 1; Pub. L. 85-120, § 1, Aug. 3, 1957, 71 Stat. 341, which was previously classified to this section. See Codification note under section 631 of this title.

AMENDMENTS

1976—Subsec. (c)(6). Pub. L. 94-273 substituted "September" for "June".

1974—Subsec. (b). Pub. L. 93-386, § 7, in the fourth sentence increased from three to four the number of Associate Administrators authorized to be appointed and added fifth sentence authorizing one of the Associate Administrators at the time of appointment to be designated as Associate Administrator for Minority Small Business. As enacted section 7 of Pub. L. 93-386 amended the third sentence and added a fourth sentence to subsec. (b), however the amendment was executed to fourth sentence and the new sentence was added as a fifth sentence editorially since this would appear to be the probable intent of Congress.

Pub. L. 93-237, § 8, added provisions that the Administrator shall not discriminate on the basis of sex or marital status against any person or small business concern applying for or receiving assistance from the Administration and that the Administration shall give special consideration to veterans of the Armed Forces of the United States and their survivors or dependents in carrying out the programs administered by the Administration.

Subsec. (c)(1). Pub. L. 93-386, § 2(a)(2), added references to sections 636(b)(8) and 636(i) of this title and struck out reference to title IV of the Economic Opportunity Act of 1964.

Pub. L. 93-237, § 3(b), substituted "636(h)" for "636(g)" in cl. (B).

Subsec. (c)(2). Pub. L. 93-386, § 2(a)(2), added references to sections 636(b)(8) and 636(i) of this title and struck out reference to title IV of the Economic Opportunity Act of 1964.

Pub. L. 93-237, § 3(b), substituted "636(h)" for "636(g)" in cl. (B).

Subsec. (c)(4). Pub. L. 93-386, § 2(a)(3), in cl. (A) substituted "636(i), and 637(a) of this title, shall not exceed $6,000,000,000" for "and 637(a) of this title, and title IV of the Economic Opportunity Act of 1964, shall not exceed $4,875,000,000", in cl. (B) substituted $725,000,000" for "$556,250,000", and in cl. (D) substituted "section 636(i) of this title, shall not exceed $450,000,000" for "title IV of the Economic Opportunity Act of 1964 shall not exceed $381,250,000".

Pub. L. 93-237, §§ 1, 3(b), substituted "$4,875,000,000" for "$4,300,000,000" and "636(h)" for "636(g)" in cl. (A), "$556,250,000" for "$500,000,000" in cl. (B), "$525,000,000" for "$500,000,000" in cl. (C) and "$381,250,000" for "$350,000,000" in cl. (D).

1972—Subsec. (c)(1). Pub. L. 92-595 added reference to section 636(g).

Pub. L. 92-500 made the disaster loan fund available for financing functions performed under section 636(g) of this title.

Pub. L. 92-385, § 2(b)(1), added reference to section 636(b)(7).

Subsec. (c)(2). Pub. L. 92-595 added reference to section 636(g).

Pub. L. 92-385, § 2(b)(2), added reference to sections 636(b)(5), 636(b)(6), 636(b)(7).

Subsec. (c)(4). Pub. L. 92-595 added reference to section 636(g).

Pub. L. 92-320 substituted "$4,300,000,000", "$500,000,000", and "$350,000,000" for "$3,100,000,000", "$450,000,000" and "$300,000,000" respectively.

1971—Subsec. (c)(4)(A). Pub. L. 92-16 substituted "$3,100,000,000" for "$2,200,000,000".

1970—Subsec. (c)(1). Pub. L. 91-597 made the disaster loan fund available for financing requirements imposed by section 636(b)(5) of this title relating to additions and alterations pursuant to the Egg Products Inspection Act, etc. See, also, 1969 Amendment note hereunder.

Pub. L. 91-596 made the disaster loan fund available for financing functions under section 636(b)(6) of this title.

Subsec. (c)(4). Pub. L. 91-558 substituted "$2,200,000,000" for "$1,900,000,000" in cl. (A), "$500,000,000" for "$300,000,000" in cl. (C), and "$300,000,000" for "$200,000,000" in cl. (D).

1969—Subsec. (c)(1). Pub. L. 91-173 made the disaster loan fund available for financing functions under section 636(b)(5) of this title, relating to loans to coal mine operators.

1968—Subsec. (a). Pub. L. 90-448 inserted "the Trust Territory of the Pacific Islands,".

1967—Subsec. (c)(4). Pub. L. 90-104, § 102(1) to (4), substituted $1,900,000,000 for $1,400,000,000 in cl. (A), $450,000,000 for $400,000,000 in cl. (B), $300,000,000 for $200,000,000 in cl. (C), and $200,000,000 for $100,000,000 in cl. (D), respectively.

1966—Subsec. (b). Pub. L. 89-779 substituted "a Deputy Administrator and three Associate Administrators (including the Associate Administrator specified in section 671 of this title)" for "three Deputy Administrators" as the officers to be appointed by the Administrator to assist in the execution of the functions vested in the Administration, and added provision that the Deputy Administrator shall be acting Administrator of the Administration during the absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator.

Subsec. (c). Pub. L. 89-409, § 1, increased by $125 million the appropriation authorization for the single SBA fund from $1,841 million to $1,966 million and the authorization for outstanding loans and commitments for regular business loans, disaster loans, and prime contract authority from $1,375 million to $1,500 million.

Pub. L. 89-409, § 2, provided for a disaster loan fund and business loan and investment fund in place of one prior SBA fund, incorporated existing provisions in par. (2), provided for allocation of unexpended balances of appropriations for prior single fund and for an appropriation authorization in par. (3), removed disaster loans from any limitation, provided limitations in par. (4) of $1,400 million for regular business loans, displaced business disaster loans, trade adjustment loans, prime contract authority, and loans under title IV of the Economic Opportunity Act of 1964, $400 million for small business investment companies, $200 million for loans to State and local development companies, $100 million for loans under title IV of the Economic Opportunity Act of 1964, incorporated existing reporting provisions in par. (4), including additional requirement of inclusion of recommendations whenever 75 percent of any ceiling in outstanding obligations is exceeded, required establishment of business-type loans, and incorporated existing provisions in par. (6).

1965—Subsec. (c). Pub. L. 89-334 substituted "$1,841,000,000" for "$1,721,000,000".

Pub. L. 89-117 substituted "$1,721,000,000" for "$1,716,000,000" and added the proviso that the limitation imposed by the fifth sentence concerning the maximum aggregate permitted to be outstanding from the fund for functions under the Small Business Investment Act of 1958 be inapplicable to functions under title IV thereof.

Pub. L. 89-78 increased from $341,000,000 to $461,000,000 the limit on the aggregate permissible amount outstanding from the fund at any time for the exercise of the functions of the Administration under the Small Business Investment Act of 1958.

Pub. L. 89-59 inserted references to section 636(c)(2) in the first sentence and in the fourth sentence, where first appearing and in clause (2) thereof, and increased the authorized appropriations to the revolving fund from $1,666,000,000 to $1,716,000,000 and the aggregate amount outstanding at any one time for regular business loans, disaster loans, and prime contract authority from $1,325,000,000 to $1,375,000,000, respectively.

1962—Subsec. (c). Pub. L. 87-550 increased the authorized appropriations to the revolving fund from $1,200,000,000 to $1,666,000,000, and the aggregate amount outstanding for purposes of sections 636(a), 636(b) and 637(a) of this title from $875,000,000 to $1,325,000,000, and for functions under the Small Business Investment Act of 1958 from $325,000,000 to $341,000,000 directed that appropriations to the revolving fund shall remain available until expended, required all repayments of loans and debentures, payments of interest, and other receipts arising out of transactions financed from the fund to be paid into the fund, and a report to Congressional committees whenever the aggregate amount outstanding for the purposes of sections 636(a) and 637(a) of this title exceeds $1,222,000,000, or for the purpose of section 636(b) of this title exceeds $103,000,000, changed the method of computing interest paid into miscellaneous receipts by substituting provisions requiring payment, following the close of each fiscal year, of interest on the outstanding cash disbursements from the fund, at rates determined by the Secretary of the Treasury, taking into consideration the current average yields on outstanding interest-bearing marketable public debt obligations of the United States of comparable maturities as calculated for the month of June preceding such fiscal year, for provisions which required payment of interest, at the close of each fiscal year, on the net amount of cash disbursements from advances at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding interest-bearing marketable public debt obligations of the United States of comparable maturities, and eliminated provisions which authorized advances from the revolving fund when requested by the Administration.

1961—Subsec. (c). Pub. L. 87-341, among other changes, substituted "$1,200,000,000" for "$1,125,000,000" wherever appearing, and "$325,000,000" for "$250,000,000".

Pub. L. 87-305 substituted "$1,125,000,000" for "$1,020,000,000" in two instances and "$725,000,000" for "$595,000,000".

Pub. L. 87-198 substituted "$1,020,000,000" for "$1,000,000,000" in two instances and "$595,000,000" for "$575,000,000".

Pub. L. 87-70 substituted "$1,000,000,000" for "$975,000,000" in two instances, and "$150,000,000" for "$125,000,000".

1959—Subsec. (c). Pub. L. 86-367 substituted "$975,000,000" for "$900,000,000" in two instances and "$575,000,000" for "$500,000,000".

1958—Subsec. (c). Pub. L. 85-699 substituted "$900,000,000" for "$650,000,000" in two instances, and inserted provisions authorizing the revolving fund to be used in the exercise of the functions of the Administration under the Small Business Investment Act of 1958, and providing that not more than an aggregate of $250,000,000 shall be outstanding at any one time for the exercise of the functions under the Small Business Investment Act of 1958.

CHANGE OF NAME

The name of the Committee on Banking and Currency of the Senate was changed to Committee on Banking, Housing and Urban Affairs by Senate Resolution 4, approved Feb. 4, 1977.

The name of the House Committee on Banking and Currency of the House of Representatives was changed to Committee on Banking, Finance and Urban Affairs, effective Jan. 4, 1977, by House Resolution 5, 95th Congress.

EFFECTIVE DATE OF 1970 AMENDMENTS

For effective date of amendment by Pub. L. 91-597, see section 29 of Pub. L. 91-597, set out as a note under section 1031 of Title 21, Food and Drugs.

Amendment by Pub. L. 91-596 effective 120 days after Dec. 29, 1970, see section 34 of Pub. L. 91-596, set out as a note under section 651 of Title 29, Labor.

FISCAL YEAR TRANSITION PERIOD OF JULY 1, 1976, THROUGH SEPTEMBER 30, 1976, DEEMED FISCAL YEAR

Fiscal year transition period of July 1, 1976, through Sept. 30, 1976, deemed fiscal year for purposes of this section, see section 201(26) of Pub. L. 94-274, set out as a note under section 343 of Title 7, Agriculture.

AUDIT BY GENERAL ACCOUNTING OFFICE OF SMALL BUSINESS ADMINISTRATION; REPORT TO CONGRESS

Section 13 of Pub. L. 93-386 directed the General Accounting Office to conduct a full-scale audit of the Small Business Administration, including all field offices and to submit the audit to the House and Senate not later than six months from Aug. 23, 1974.

NONAVAILABILITY OF UNOBLIGATED FUNDS AFTER JUNE 30, 1974

Section 1 of Pub. L. 93-237 provided in part that any additional amounts authorized by Pub. L. 93-237 [amending this section and sections 636 and 639 of this title, section 1961 of Title 7, Agriculture, and section 3142-1 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 636 of this title and sections 1961 and 1969 of title 7] which were not obligated by June 30, 1974, were no longer to be available after that date.

ADDITIONAL CAPITAL FOR REVOLVING FUND

The following acts appropriated additional capital:

1965—$76,000,000—Pub. L. 89-309, ch. IX, § 901, Oct. 31, 1965, 79 Stat. 1151.

$84,000,000—Pub. L. 89-309, ch. IX, § 901, Oct. 31, 1965, 79 Stat. 1151 [effective only upon enactment into law of authorizing legislation].

$150,000,000—Pub. L. 89-164, title V, § 501, Sept. 2, 1965, 79 Stat. 641.

$100,000,000—Pub. L. 89-16, title I, ch. IX, § 101, Apr. 30, 1965, 79 Stat. 92.

1964—$45,000,000—Pub. L. 88-635, ch. IX, § 901, Oct. 7, 1964, 78 Stat. 1032.

1963—$90,000,000—Pub. L. 88-245, title V, § 501, Dec. 30, 1963, 77 Stat. 798.

1962—$300,000,000—Pub. L. 87-843, title V, § 501, Oct. 18, 1962, 76 Stat. 1102.

$40,000,000—Pub. L. 87-545, title I, § 101, July 25, 1962, 76 Stat. 213.

1961—$160,000,000—Pub. L. 87-332, Sept. 30, 1961, 75 Stat. 742.

$20,000,000—Pub. L. 87-125, title IV, § 401, Aug. 3, 1961, 75 Stat. 281.

1960—$50,000,000—Pub. L. 86-451, title III, § 301, May 13, 1960, 74 Stat. 102.

1959—$150,000,000—Pub. L. 86-88, title III, § 301, July 13, 1959, 73 Stat. 209.

1958—$200,000,000—Pub. L. 85-766, ch. II, § 201, Aug. 27, 1958, 72 Stat. 867.

$20,000,000—Pub. L. 85-457, June 13, 1958, 72 Stat. 186.

1957—$100,000,000—Pub. L. 85-170, ch. II, § 201, Aug. 28, 1957, 71 Stat. 428.

$45,000,000—Pub. L. 85-19, ch. I, § 101, Apr. 20, 1957, 71 Stat. 16.

1956—$50,000,000—Act June 20, 1956, ch. 415, title III, § 301, 70 Stat. 325.

BUSINESS LOAN AND INVESTMENT FUND; INCREASE IN FINANCING FUNCTIONS; MONTHLY REPORTS TO CONGRESS

Pub. L. 91-151, title III, § 301, Dec. 23, 1969, 83 Stat. 378, provided that: "The Small Business Administration shall promptly increase the level of its financing functions utilizing the business loan and investment fund established under section 4(c)(1)(B) of the Small Business Act (15 U.S.C. 633(c)(1)(B)) [subsec. (c)(1)(B) of this section] by $70,000,000 above the level prevailing at the time of enactment of this Act [Dec. 23, 1969]. The Small Business Administration shall submit to Congress a monthly report of its implementation of this section."

TRANSFER OF FUNDS FOR TRADE ADJUSTMENT LOANS

Section 3(b) of Pub. L. 89-409 provided in part that any unexpended balances of appropriations heretofore appropriated for the purposes of such section [former section 637a of this title] were transferred to the business loan and investment fund established by section 4(c)(1) of the Small Business Act [subsec. (c)(1) of this section].

Such transfer of funds as effective July 1, 1966, see section 3(c) of Pub. L. 89-409, set out as Effective Date of 1966 Amendment note under section 636 of this title.

ABOLITION OF LOAN POLICY BOARD

The Loan Policy Board, provided for in subsec. (d) of this section, was abolished and its functions, including the functions of the chairman and other officers, were transferred to the Administrator of the Small Business Administration by sections 11(b) and 13(a) of Reorg. Plan No. 4 of 1965, eff. July 27, 1965, 30 F.R. 9353, 79 Stat. 1321, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 635, 636 of this title.

§ 634. General powers

(a) Seal; appointment and compensation of personnel; use of other services and facilities

The Administration shall have power to adopt, alter, and use a seal, which shall be judicially noticed. The Administrator is authorized, subject to the civil service and classification laws, to select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary to carry out the provisions of this chapter; to define their authority and duties; and to pay the costs of qualification of certain of them as notaries public. The Administration, with the consent of any board, commission, independent establishment, or executive department of the Government, may avail itself on a reimbursable or nonreimbursable basis of the use of information, services, facilities (including any field service thereof), officers, and employees thereof, in carrying out the provisions of this chapter.

(b) Powers of Administrator

In the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter the Administrator may—

(1) sue and be sued in any court of record of a State having general jurisdiction, or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Administrator or his property;

(2) under regulations prescribed by him, assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with the payment of loans granted under this chapter, and to collect or compromise all obligations assigned to or held by him and all legal or equitable rights accruing

to him in connection with the payment of such loans until such time as such obligations may be referred to the Attorney General for suit or collection;

(3) deal with, complete, renovate, improve, modernize, insure, or rent, or sell for cash or credit upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any real property conveyed to or otherwise acquired by him in connection with the payment of loans granted under this chapter;

(4) pursue to final collection, by way of compromise or otherwise, all claims against third parties assigned to the Administrator in connection with loans made by him. This shall include authority to obtain deficiency judgments or otherwise in the case of mortgages assigned to the Administrator. Section 5 of title 41 shall not be construed to apply to any contract of hazard insurance or to any purchase or contract for services or supplies on account of property obtained by the Administrator as a result of loans made under this chapter if the premium therefor or the amount thereof does not exceed $1,000. The power to convey and to execute in the name of the Administrator deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real property or any interest therein acquired by the Administrator pursuant to the provisions of this chapter may be exercised by the Administrator or by any officer or agent appointed by him without the execution of any express delegation of power or power of attorney. Nothing in this section shall be construed to prevent the Administrator from delegating such power by order or by power of attorney, in his discretion, to any officer or agent he may appoint;

(5) acquire, in any lawful manner, any property (real, personal, or mixed, tangible or intangible), whenever deemed necessary or appropriate to the conduct of the activities authorized in sections 636(a) and 636(b) of this title;

(6) make such rules and regulations as he deems necessary to carry out the authority vested in him by or pursuant to this chapter;

(7) in addition to any powers, functions, privileges, and immunities otherwise vested in him, take any and all actions, including the procurement of the services of attorneys by contract, determined by him to be necessary or desirable in making, servicing, compromising, modifying, liquidating, or otherwise dealing with or realizing on loans made under the provisions of this chapter; but no attorneys' services shall be procured by contract in any office where an attorney or attorneys are or can be economically employed full time to render such services;

(8) pay the transportation expenses and per diem in lieu of subsistence expenses, in accordance with subchapter I of chapter 57 of title 5, for travel of any person employed by the Administration to render temporary services not in excess of six months in connection with any disaster referred to in section 636(b) of this title from place of appointment to, and while at, the disaster area and any other temporary posts of duty and return upon completion of the assignment;

(9) accept the services and facilities of Federal, State, and local agencies and groups, both public and private, and utilize such gratuitous services and facilities as may, from time to time, be necessary, to further the objectives of section 636(b) of this title;

(10) upon purchase by the Administration of any deferred participation entered into under section 636 of this title, continue to charge a rate of interest not to exceed that initially charged by the participating institution on the amount so purchased for the remaining term of the indebtedness; and

(11) make such investigations as he deems necessary to determine whether a recipient of or participant in any assistance under this chapter or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation, the Administration is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpena issued to, any person, including a recipient or participant, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

(c) Procurement of experts and consultants; compensation and expenses

To such extent as he finds necessary to carry out the provisions of this chapter, the Administrator is authorized to procure the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract or appointment, and in such cases such services shall be without regard to the civil-service and classification laws and, except in the case of stenographic reporting services by organizations, without regard to section 5 of title 41. Any individual so employed may be compensated at a rate not in excess of $50 per diem, and, while such individual is away from his home or regular place of business, he may be allowed transportation and not to exceed $15 per diem in lieu of subsistence and other expenses.

(d) Safety deposit box rentals

Section 529 of title 31 shall not apply to prepayments of rentals made by the Administration on safety deposit boxes used by the Administration for the safeguarding of instruments held as security for loans or for the safeguarding of other documents.

(Pub. L. 85-536, § 2[5], July 18, 1958, 72 Stat. 385; Pub. L. 87-305, § 4, Sept. 26, 1961, 75 Stat. 666; Pub. L. 87-367, title I, § 103(3), Oct. 4, 1961, 75 Stat. 787; Pub. L. 92-310, title II, § 224(a), June 6, 1972, 86 Stat. 206; Pub. L. 93-386, §§ 3(1), 10, Aug. 23, 1974, 88 Stat. 745, 749; Pub. L. 94-305, title II, § 208, June 4, 1976, 90 Stat. 671.)

References in Text

The civil service laws, referred to in subsecs. (a) and (c), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

The classification laws, referred to in subsecs. (a) and (c), are set forth in chapter 51 and subchapter III of chapter 53 of Title 5.

Codification

"Subchapter I of chapter 57 of title 5" was substituted for "the Travel Expense Act of 1949", in subsec. (b)(8), on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

Prior similar provisions were contained in section 205 of act July 30, 1953, ch. 282, title II, 67 Stat. 234, as amended by act Aug. 9, 1955, ch. 628, § 4, 69 Stat. 547, which was classified to this section. See Codification note under section 631 of this title.

Amendments

1976—Subsec. (e). Pub. L. 94-305 struck out subsec. (e) which provided for the appointment, by the Administrator, of the Chief Counsel for Advocacy who would serve as a focal point for complaints and suggestions, counsel small businessmen, develop proposals for change, represent interest of small businesses before federal agencies and enlist the cooperation of public and private agencies. See sections 634a to 634g of this title.

1974—Subsecs. (b)(10), (11). Pub. L. 93-386, § 3(1), added subsecs. (b)(10) and (11).

Subsec. (e). Pub. L. 93-386, § 10, added subsec. (e).

1972—Subsec. (a). Pub. L. 92-310 eliminated provisions which authorized the Administrator to provide bonds for officers, employees, attorneys, and agents.

1961—Subsec. (a). Pub. L. 87-367 deleted authorization for fifteen additional positions in grades 16, 17, and 18 of the General Schedule of the Classification Act of 1949.

Subsec. (d). Pub. L. 87-305 added subsec. (d).

Emergency Preparedness Functions

For assignment of certain emergency preparedness functions to the Administrator of the Small Business Administration, see Parts 1, 26, and 30 of Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, set out as a note under section 2292 of Appendix to Title 50, War and National Defense.

Small Business Protection

Pub. L. 90-104, title III, §§ 301-303, Oct. 11, 1967, 81 Stat. 272, authorized the Administrator of the Small Business Administration to conduct a special study of the impact on small business concerns of robbery, burglary, shoplifting, vandalism, and other criminal activities, and report to the President and to the Congress the results of the study, including such recommendations as he may deem appropriate for administrative and legislative action, within one year after Oct. 11, 1967.

Section Referred to in Other Sections

This section is referred to in section 693 of this title.

§ 634a. Office of Advocacy within Small Business Administration; Chief Counsel for Advocacy

There is established within the Small Business Administration an Office of Advocacy. The management of the Office shall be vested in a Chief Counsel for Advocacy who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(Pub. L. 94-305, title II, § 201, June 4, 1976, 90 Stat. 668.)

Codification

Section was not enacted as part of the Small Business Act which comprises this chapter.

Section Referred to in Other Sections

This section is referred to in sections 634d, 634e, 634g of this title.

§ 634b. Primary functions of Office of Advocacy

The primary functions of the Office of Advocacy shall be to—

(1) examine the role of small business in the American economy and the contribution which small business can make in improving competition, encouraging economic and social mobility for all citizens, restraining inflation, spurring production, expanding employment opportunities, increasing productivity, promoting exports, stimulating innovation and entrepreneurship, and providing an avenue through which new and untested products and services can be brought to the marketplace;

(2) assess the effectiveness of existing Federal subsidy and assistance programs for small business and the desirability of reducing the emphasis on such existing programs and increasing the emphasis on general assistance programs designed to benefit all small businesses;

(3) measure the direct costs and other effects of government regulation on small businesses; and make legislative and nonlegislative proposals for eliminating excessive or unnecessary regulations of small businesses;

(4) determine the impact of the tax structure on small businesses and make legislative and other proposals for altering the tax structure to enable all small businesses to realize their potential for contributing to the improvement of the Nation's economic well-being;

(5) study the ability of financial markets and institutions to meet small business credit needs and determine the impact of government demands for credit on small businesses;

(6) determine financial resource availability and to recommend methods for delivery of financial assistance to minority enterprises, including methods for securing equity capital,

for generating markets for goods and services, for providing effective business education, more effective management and technical assistance, and training, and for assistance in complying with Federal, State, and local law;

(7) evaluate the efforts of Federal agencies, business and industry to assist minority enterprises;

(8) make such other recommendations as may be appropriate to assist the development and strengthening of minority and other small business enterprises;

(9) recommend specific measures for creating an environment in which all businesses will have the opportunity to complete effectively and expand to their full potential, and to ascertain the common reasons, if any, for small business successes and failures; and

(10) determine the desirability of developing a set of rational, objective criteria to be used to define small business, and to develop such criteria, if appropriate.

(Pub. L. 94-305, title II, § 202, June 4, 1976, 90 Stat. 668.)

Codification

Section was not enacted as part of the Small Business Act which comprises this chapter.

Section Referred to in Other Sections

This section is referred to in sections 634d to 634g of this title.

§ 634c. Additional duties of Office of Advocacy

The Office of Advocacy shall also perform the following duties on a continuing basis:

(1) serve as a focal point for the receipt of complaints, criticisms, and suggestions concerning the policies and activities of the Administration and any other Federal agency which affects small businesses;

(2) counsel small businesses on how to resolve questions and problems concerning the relationship of the small business to the Federal Government;

(3) develop proposals for changes in the policies and activities of any agency of the Federal Government which will better fulfill the purposes of this chapter and communicate such proposals to the appropriate Federal agencies;

(4) represent the views and interests of small businesses before other Federal agencies whose policies and activities may affect small business; and

(5) enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by the Federal Government which are of benefit to small businesses, and information on how small businesses can participate in or make use of such programs and services.

(Pub. L. 94-305, title II, § 203, June 4, 1976, 90 Stat. 669.)

Codification

Section was not enacted as part of the Small Business Act which comprises this chapter.

Section Referred to in Other Sections

This section is referred to in sections 634d, 634e, 634g of this title.

§ 634d. Staff and powers of Office of Advocacy

In carrying out the provisions of section 634b of this title, after consultation with and subject to the approval of the Administrator, the Chief Counsel for Advocacy may—

(1) employ and fix the compensation of such additional staff personnel as is deemed necessary, without regard to the provisions of title 5, governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates but at rates not in excess of the lowest rate for GS-15 of the General Schedule;

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5;

(3) consult with experts and authorities in the fields of small business investment, venture capital, investment and commercial banking and other comparable financial institutions involved in the financing of business, and with individuals with regulatory, legal, economic, or financial expertise, including members of the academic community, and individuals who generally represent the public interest;

(4) utilize the services of the National Advisory Council established pursuant to the provisions of section 637(b)(13) of this title and in accordance with the provisions of such statute, also appoint such other advisory boards or committees as is reasonably appropriate and necessary to carry out the provisions of sections 634a to 634g of this title; and

(5) hold hearings and sit and act at such times and places as he may deem advisable.

(Pub. L. 94-305, title II, § 204, June 4, 1976, 90 Stat. 669.)

References in Text

The provisions of title 5 governing appointments in the competitive service, referred to in par. (1), are classified to section 3301 et seq. of Title 5, Government Organization and Employees. The General Schedule, referred to in par. (1), is set out under section 5332 of Title 5.

Codification

Section was not enacted as part of the Small Business Act which comprises this chapter.

Section Referred to in Other Sections

This section is referred to in sections 634e, 634g of this title.

§ 634e. Assistance of Government agencies

Each department, agency, and instrumentality of the Federal Government is authorized and directed to furnish to the Chief Counsel for Advocacy such reports and other information as he deems necessary to carry out his functions under sections 634a to 634g of this title.

(Pub. L. 94-305, title II, § 205, June 4, 1976, 90 Stat. 670.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 634d, 634g of this title.

§ 634f. Reports

The Chief Counsel may from time to time prepare and publish such reports as he deems appropriate. Not later than one year after June 4, 1976, he shall transmit to the Congress, the President and the Administration, a full report containing his findings and specific recommendations with respect to each of the functions referred to in section 634b of this title, including specific legislative proposals and recommendations for administration or other action. Not later than 6 months after June 4, 1976, he shall prepare and transmit a preliminary report on his activities. The reports shall not be submitted to the Office of Management and Budget or to any other Federal agency or executive department for any purpose prior to transmittal to the Congress and the President.

(Pub. L. 94-305, title II, § 206, June 4, 1976, 90 Stat. 670.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 634d, 634e, 634g of this title.

§ 634g. Authorization of appropriations

There are authorized to be appropriated not to exceed $1,000,000 to carry out the provisions of sections 634a to 634g of this title. Any sums so appropriated shall remain available until expended.

(Pub. L. 94-305, title II, § 207, June 4, 1976, 90 Stat. 671.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 634d, 634e of this title.

§ 635. Deposit of moneys; depositaries, custodians, and fiscal agents; contributions to employees' compensation funds

(a) All moneys of the Administration not otherwise employed may be deposited with the Treasury of the United States subject to check by authority of the Administration. The Federal Reserve banks are authorized and directed to act as depositaries, custodians, and fiscal agents for the Administration in the general performance of its powers conferred by this chapter. Any banks insured by the Federal Deposit Insurance Corporation, when designated by the Secretary of the Treasury, shall act as custodians and financial agents for the Administration. Each Federal Reserve bank, when designated by the Administrator as fiscal agent for the Administration, shall be entitled to be reimbursed for all expenses incurred as such fiscal agent.

(b) The Administrator shall contribute to the employees' compensation fund, on the basis of annual billings as determined by the Secretary of Labor, for the benefit payments made from such fund on account of employees engaged in carrying out functions financed by the revolving fund established by section 633(c) of this title. The annual billings shall also include a statement of the fair portion of the cost of the administration of such fund, which shall be paid by the Administrator into the Treasury as miscellaneous receipts.

(Pub. L. 85-536, § 2[6], July 18, 1958, 72 Stat. 387.)

CODIFICATION

Prior similar provisions were contained in section 206 of act July 30, 1953, ch. 282, title II, 67 Stat. 235, which was previously classified to this section. See Codification note under section 631 of this title.

§ 636. Additional powers

(a) Loans to small-business concerns; restrictions and limitations

The Administration is empowered to make loans to enable small-business concerns to finance plant construction, conversion, or expansion, including the acquisition of land; or to finance the acquisition of equipment, facilities, machinery, supplies, or materials; or to supply such concerns with working capital to be used in the manufacture of articles, equipment, supplies, or materials for war, defense, or civilian production or as may be necessary to insure a well-balanced national economy; and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) No financial assistance shall be extended pursuant to this subsection unless the financial assistance applied for is not otherwise available on reasonable terms from non-Federal sources.

(2) No immediate participation may be purchased unless it is shown that a deferred participation is not available; and no loan may be made unless it is shown that a participation is not available.

(3) In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.

(4) Except as provided in paragraph (5), (A) no loan under this subsection shall be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the revolving fund established by this chapter would exceed $500,000: *Provided,* That no such loan made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis shall exceed $350,000; (B) the rate of interest for the Administration's share of any such loan shall be the average annual interest rate on

all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum plus one-quarter of 1 per centum per annum; (C) no such loans including renewals and extensions thereof may be made for a period or periods exceeding ten years, except that such portion of a loan made for the purpose of acquiring real property or constructing facilities may have a maturity of twenty years plus such additional period as is estimated may be required to complete such construction.

(5) In the case of any loan made under this subsection to a corporation formed and capitalized by a group of small-business concerns with resources provided by them for the purpose of obtaining for the use of such concerns raw materials, equipment, inventories, supplies or the benefits of research and development, or for establishing facilities for such purpose, (A) the limitation of $350,000 prescribed in paragraph (4) shall not apply, but the limit of such loan shall be $250,000 multiplied by the number of separate small businesses which formed and capitalized such corporation; (B) the rate of interest for the Administration's share of any such loan shall be the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum plus one-quarter of 1 per centum per annum; and (C) such loan, including renewals and extensions thereof, may not be made for a period or periods exceeding ten years except that if such loan is made for the purpose of constructing facilities it may have a maturity of twenty years plus such additional time as is required to complete such construction.

(6) The Administrator is authorized to consult with representatives of small-business concerns with a view to encouraging the formation by such concerns of the corporation referred to in paragraph (5). No act or omission to act, if requested by the Administrator pursuant to this paragraph, and if found and approved by the Administration as contributing to the needs of small business, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act [15 U.S.C. 41 et seq.] of the United States. A copy of the statement of any such finding and approval intended to be within the coverage of this section, and any modification or withdrawal thereof, shall be furnished to the Attorney General and the Chairman of the Federal Trade Commission when made, and it shall be published in the Federal Register. The authority granted in this paragraph shall be exercised only (A) by the Administrator, (B) upon the condition that the Administrator consult with the Attorney General and with the Chairman of the Federal Trade Commission, and (C) upon the condition that the Administrator obtain the approval of the Attorney General before exercising such authority. Upon withdrawal of any request or finding hereunder or upon withdrawal by the Attorney General of his approval granted under the preceding sentence, the provisions of this paragraph shall not apply to any subsequent act or omission to act by reason of such finding or request.

(7) All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment.

(8) During the fiscal year ending June 30, 1975, the Administrator shall make direct loans under this subsection in an aggregate amount of not less than $400,000,000.

(b) Disaster loans; term; suspension of principal and interest payments; rate of interest

The Administration also is empowered—

(1) To make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate because of floods, riots or civil disorders, or other catastrophes;

(2) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to any small business concern located in an area affected by a disaster, if the Administration determines that the concern has suffered a substantial economic injury as a result of such disaster and if such disaster constitutes—

(A) a major disaster, as determined by the President under the Act entitled "An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes", approved September 30, 1950, as amended (42 U.S.C. 1855-1855g), or

(B) a natural disaster, as determined by the Secretary of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1961);

(3) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in continuing in business at its existing location, in reestablishing its business, in purchasing a business, or in establishing a new business, if the Administration determines that such concern has suffered substantial economic injury as the result of its displacement by, or location in, adjacent to, or near, a federally aided urban renewal program or a highway project or any other construction constructed by or with funds provided in whole or in part by the Federal Government; and the purpose of a loan made pursuant to such project or program may, in the discretion of the Administration, include the purchase or construction of other premises whether or not the borrower owned the premises occupied by the business; and

(4) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Ad-

ministration may determine to be necessary or appropriate to assist any small business concern in reestablishing its business if the Administration determines that such concern has suffered substantial economic injury as a result of the inability of such concern to process or market a product for human consumption because of disease or toxicity occuring in such product through natural or undetermined causes; and

(5) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in effecting additions to or alterations in its plant, facilities, or methods of operation to meet requirements imposed on such concern pursuant to any Federal law, any State law enacted in conformity therewith, or any regulation or order of a duly authorized, Federal, State, regional, or local agency issued in conformity with such Federal law, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph: *Provided*, That the maximum loan made to any small business concern under this paragraph shall not exceed the maximum loan which, under rules or regulations prescribed by the Administration, may be made to any business enterprise under paragraph (1) of this subsection; and

(6) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist, or to refinance the existing indebtedness of, any small business concern directly and seriously affected by the significant reduction of the scope or amount of Federal support for any project as a result of any international agreement limiting the development of strategic arms or the installation of strategic arms or strategic arms facilities, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this paragraph.

(7) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in continuing in business at its existing location, in reestablishing its business, in purchasing a new business, or in establishing a new business if the Administration determines that such concern has suffered or will suffer substantial economic injury as the result of the closing by the Federal Government of a major military installation under the jurisdiction of the Department of Defense, or as a result of a severe reduction in the scope and size of operations at a major military installation; and

(8) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist, or refinance the existing indebtedness of, any small business concern seriously and adversely affected by a shortage of fuel, electrical energy, or energy-producing resources, or by a shortage of raw or processed materials resulting from such shortages, if the Administration determines that such concern has suffered or is likely to suffer substantial economic injury without assistance under this paragraph.

No loan under this subsection, including renewals and extensions thereof, may be made for a period or periods exceeding thirty years: *Provided*, That the Administrator may consent to a suspension in the payment of principal and interest charges on, and to an extension in the maturity of, the Federal share of any loan under this subsection for a period not to exceed five years, if (A) the borrower under such loan is a homeowner or a small business concern, (B) the loan was made to enable (i) such homeowner to repair or replace his home, or (ii) such concern to repair or replace plant or equipment which was damaged or destroyed as the result of a disaster meeting the requirements of clause (A) or (B) of paragraph (2) of this subsection, and (C) the Administrator determines such action is necessary to avoid severe financial hardship: *Provided further*, That the provisions of paragraph (1) of subsection (c) of this section shall not be applicable to any such loan having a maturity in excess of twenty years. Notwithstanding the provisions of any other law, the interest rate on the Administration's share of any loan made under this subsection shall not exceed the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum plus one-quarter of 1 per centum: *Provided, however*, That the interest rate for loans made under paragraphs (1) and (2) hereof shall not exceed the rate of interest which is in effect at the time of the occurrence of the disaster. In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.

In the administration of the disaster loan program under paragraphs (1), (2), and (4) of this subsection, in the case of property loss or damage or injury resulting from a major disaster as determined by the President or a disaster as determined by the Administrator which occurs on or after January 1, 1971, and prior to July 1, 1973, the Small Business Administration, to the extent such loss or damage or injury is not compensated for by insurance or otherwise—

(A) may make any loan for repair, rehabilitation, or replacement of property damaged or destroyed without regard to whether the required financial assistance is otherwise available from private sources;

(B) may, in the case of the total destruction or substantial property damage of a home or business concern, refinance any mortgage or other liens outstanding against the destroyed or damaged property if such property is to be repaired, rehabilitated, or replaced, except that (1) in the case of a business concern, the amount refinanced shall not exceed the amount of the physical loss sustained, and (2) in the case of a home, the amount of each monthly payment of principal and interest on the loan after refinancing under this clause shall be not less than the amount of each such payment made prior to such refinancing;

(C) may, in the case of a loan made under clause (A) or a mortgage or other lien refinanced under clause (B) in connection with the destruction of, or substantial damage to, property owned and used as a residence by an individual who by reason of retirement, disability, or other similar circumstances relies for support on survivor, disability, or retirement benefits under a pension, insurance, or other program, consent to the suspension of the payments of the principal of that loan, mortgage, or lien during the lifetime of that individual and his spouse for so long as the Administration determines that making such payments would constitute a substantial hardship;

(D) shall, notwithstanding the provisions of any other law and upon presentation by the applicant of proof of loss or damage or injury and a bona fide estimate of cost of repair, rehabilitation, or replacement, cancel the principal of any loan made to cover a loss or damage or injury resulting from such disaster, except that—

(i) with respect to a loan made in connection with a disaster occurring on or after January 1, 1971 but prior to January 1, 1972, the total amount so canceled shall not exceed $2,500, and the interest on the balance of the loan shall be at a rate of 3 per centum per annum; and

(ii) with respect to a loan made in connection with a disaster occurring on or after January 1, 1972 but prior to July 1, 1973, the total amount so canceled shall not exceed $5,000, and the interest on the balance of the loan shall be at a rate of 1 per centum per annum.

With respect to any loan referred to in clause (D) which is outstanding on August 16, 1972, the Administrator shall—

(i) make such change in the interest rate on the balance of such loan as is required under that clause effective as of August 16, 1972; and

(ii) in applying the limitation set forth in that clause with respect to the total amount of such loan which may be canceled, consider as part of the amount so canceled any part of such loan which was previously canceled pursuant to section 231 of the Disaster Relief Act of 1970 [15 U.S.C. 636a].

Whoever wrongfully misapplies the proceeds of a loan obtained under this subsection shall be civilly liable to the Administrator in an amount equal to one-and-one-half times the original principal amount of the loan.

(c) Extension or renewal of loans; purchase of participations; assumption of obligations

(1) The Administration may further extend the maturity of or renew any loan made pursuant to this section, or any loan transferred to the Administration pursuant to Reorganization Plan Numbered 2 of 1954, or Reorganization Plan Numbered 1 of 1957, for additional periods not to exceed ten years beyond the period stated therein, if such extension or renewal will aid in the orderly liquidation of such loan.

(2) During any period in which principal and interest charges are suspended on the Federal share of any loan, as provided in subsection (b) of this section, the Administrator shall, upon the request of any person, firm, or corporation having a participation in such loan, purchase such participation, or assume the obligation of the borrower, for the balance of such period, to make principal and interest payments on the non-Federal share of such loan: *Provided,* That no such payments shall be made by the Administrator in behalf of any borrower unless (i) the Administrator determines that such action is necessary in order to avoid a default, and (ii) the borrower agrees to make payments to the Administration in an aggregate amount equal to the amount paid in its behalf by the Administrator, in such manner and at such times (during or after the term of the loan) as the Administrator shall determine having due regard to the purposes sought to be achieved by this paragraph.

(d) Grants for studies, research, and counseling concerning the managing, financing, and operation of small-business enterprises; study and research recommendations; conditions

The Administration also is empowered to make grants to any State government or any agency thereof, any State-chartered development credit or finance corporation, any land-grant college or university, any college or school of business, engineering, commerce, or agriculture, or to any corporation formed by two or more of the entities hereinabove described which are eligible to receive such grants, for studies, research, and counseling concerning the managing, financing, and operation of small business enterprises and technical and statistical information necessary thereto in order to carry out the purposes of section 637(b)(1) of this title by coordinating such information with existing information facilities within the State and by making such information available to State and local agencies. The Administrator may recommend to grant applicants particular studies or research which are to be financed by such grants. The total of all grants (including amendments and modifications thereof) made under this subsection within any one State in any one year shall not exceed $40,000. The Administration may require, as a condition to any grant (or amendment or modification thereof) made under this subsection, that an additional amount not exceeding the amount of such grant be provided from sources other than the Administration to assist in carrying out the purposes for which such grant is made: *Provided,* That if such grant or any part thereof is to be utilized for the purpose of providing counseling services to individual small business enterprises the Administration shall require that such additional amount be provided and in an amount which is equal to the amount of such grant. What constitutes such additional amount may be defined by the Administration.

(e) Trade adjustment loans

The Administration also is empowered to make loans (either directly or in cooperation with banks or other lenders through agreements to participate on an immediate or deferred basis) to assist any firm to adjust to changed economic conditions resulting from increased competition from imported articles, but only if (1) an adjustment proposal of such firm has been certified by the Secretary of Commerce pursuant to the Trade Expansion Act of 1962 [19 U.S.C. 1801 et seq.], (2) the Secretary has referred such proposal to the Administration under that Act and the loan would provide part or all of the financial assistance necessary to carry out such proposal, and (3) the Secretary's certification is in force at the time the Administration makes the loan. With respect to loans made under this subsection the Administration shall apply the provisions of sections 314, 315, 316, 318, 319, and 320 of the Trade Expansion Act of 1962 [19 U.S.C. 1914, 1915, 1916, 1918, 1919, and 1920] as though such loans had been made under section 314 of that Act [19 U.S.C. 1914].

(f) Assistance to privately owned higher education in major disaster areas; repayment

In the administration of the disaster loan program under subsection (b)(1) of this section, in the case of property loss or damage as a result of a disaster which is a "major disaster" as defined in section 2(a) of the Act of September 30, 1950 (42 U.S.C. 1855a(a)), the Small Business Administration, to the extent such loss or damage is not compensated for by insurance or otherwise, may lend to a privately owned college or university without regard to whether the required financial assistance is otherwise available from private sources, and may waive interest payments and defer principal payments on such a loan for the first three years of the term of the loan.

(g) Loans to small business concerns for water pollution control facilities

(1) The Administration also is empowered to make loans (either directly or in cooperation with banks or other lenders through agreements to participate on an immediate or deferred basis) to assist any small business concern in affecting additions to or alterations in the equipment, facilities (including the construction of pretreatment facilities and interceptor sewers), or methods of operation of such concern to meet water pollution control requirements established under the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this subsection.

(2) Any such loan—

(A) shall be made in accordance with provisions applicable to loans made pursuant to subsection (b)(5) of this section, except as otherwise provided in this subsection;

(B) shall be made only if the applicant furnishes the Administration with a statement in writing from the Environmental Protection Agency or, if appropriate, the State, that such additions or alterations are necessary and adequate to comply with requirements established under the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.].

(3) The Administrator of the Environmental Protection Agency shall, as soon as practicable after October 18, 1972, and not later than one hundred and eighty days thereafter, promulgate regulations establishing uniform rules for the issuance of statements for the purpose of paragraph (2)(B) of this subsection.

(4) There is authorized to be appropriated to the disaster loan fund established pursuant to section 633(c) of this title not to exceed $800,000,000 solely for the purpose of carrying out this subsection.

(h) Loans to handicapped persons and organizations for handicapped

(1) The Administration also is empowered, where other financial assistance is not available on reasonable terms, to make such loans (either directly or in cooperation with Banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate—

(A) to assist any public or private organization—

(i) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(ii) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(iii) which, in the production of commodities and in the provision of services during any fiscal year in which it receives financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services; or

(B) to assist any handicapped individual in establishing, acquiring, or operating a small business concern.

(2) The Administration's share of any loan made under this subsection shall not exceed $350,000, nor may any such loan be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by section 633(c)(1)(B) of this title would exceed $350,000. In agreements to participate in loans on a deferred basis under this subsection, the Administration's participation may total 100 per centum of the balance of the loan at the time of disbursement. The Administration's share of any loan made under this subsection shall bear interest at the rate of 3 per centum per annum. The maximum term of any such loan, including extensions and renewals thereof, may not exceed fifteen years. All loans made under this subsection shall be of such sound value or so secured as reasonably to

assure repayment: *Provided, however,* That any reasonable doubt shall be resolved in favor of the applicant.

(3) For purposes of this subsection, the term "handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

(i) Loans to small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals.

(1) The Administration also is empowered to make, participate (on an immediate basis) in, or guarantee loans, repayable in not more than fifteen years, to any small business concern, or to any qualified person seeking to establish such a concern, when it determines that such loans will further the policies established in section 631(b) of this title, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals: *Provided, however,* That no such loans shall be made, participated in, or guaranteed if the total of such Federal assistance to a single borrower outstanding at any one time would exceed $100,000. The Administration may defer payments on the principal of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern. The Administration may, in its discretion, as a condition of such financial assistance, require that the borrower take steps to improve his management skills by participating in a management training program approved by the Administration: *Provided, however,* That any management training program so approved must be of sufficient scope and duration to provide reasonable opportunity for the individuals served to develop entrepreneurial and managerial self-sufficiency.

(2) The Administration shall encourage, as far as possible, the participation of the private business community in the program of assistance to such concerns, and shall seek to stimulate new private lending activities to such concerns through the use of the loan guarantees, participations in loans, and pooling arrangements authorized by this subsection.

(3) To insure an equitable distribution between urban and rural areas for loans between $3,500 and $100,000 made under this subsection, the Administration is authorized to use the agencies and agreements and delegations developed under title III of the Economic Opportunity Act of 1964, as amended [42 U.S.C. 2841 et seq.], as it shall determine necessary.

(4) The Administration shall provide for the continuing evaluation of programs under this subsection, including full information on the location, income characteristics, and types of businesses and individuals assisted, and on new private lending activity stimulated, and the results of such evaluation together with recommendations shall be included in the report required by section 639(a) of this title.

(5) Loans made pursuant to this subsection (including immediate participation in and guarantees of such loans) shall have such terms and conditions as the Administration shall determine, subject to the following limitations—

(A) there is reasonable assurance of repayment of the loan;

(B) the financial assistance is not otherwise available on reasonable terms from private sources or other Federal, State, or local programs;

(C) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made;

(D) the loan bears interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Treasury obligations of comparable maturity, plus (ii) such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes: *Provided, however,* That the rate of interest charged on loans made in redevelopment areas designated under the Public Works and Economic Development Act of 1965 [42 U.S.C. 3121 et seq.] shall not exceed the rate currently applicable to new loans made under section 201 of that Act [42 U.S.C. 3141]; and

(E) fees not in excess of amounts necessary to cover administrative expenses and probable losses may be required on loan guarantees.

(6) The Administration shall take such steps as may be necessary to insure that, in any fiscal year, at least 50 per centum of the amounts loaned or guaranteed pursuant to this subsection are allotted to small business concerns located in urban areas identified by the Administration as having high concentrations of unemployed or low-income individuals or to small business concerns owned by low-income individuals. The Administration shall define the meaning of low income as it applies to owners of small business concerns eligible to be assisted under this subsection.

(7) No financial assistance shall be extended pursuant to this subsection where the Administration determines that the assistance will be used in relocating establishments from one area to another if such relocation would result in an increase in unemployment in the area of original location.

(j) Financial assistance for projects providing technical or management assistance to individuals or enterprises eligible for assistance as small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals

(1) The Administration is authorized to provide financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under subsection (i) of this section, with special attention to small business

located in urban areas of high concentration of unemployed or low-income individuals or owned by low-income individuals.

(2) Financial assistance under this subsection may be provided for projects, including without limitation—

(A) planning and research, including feasibility studies and market research;

(B) the identification and development of new business opportunities;

(C) the furnishing of centralized services with regard to public services and Government programs including programs authorized under subsection (i) of this section;

(D) the establishment and strengthening of business service agencies, including trade associations and cooperatives;

(E) the encouragement of the placement of subcontracts by major business with small business concerns located in urban areas of high concentration of unemployed or low-income individuals or owned by low-income individuals, including the provision of incentives and assistance to such major businesses so that they will aid in the training and upgrading of potential subcontractors or other small business concerns; and

(F) the furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing businesses, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(3) The Administration shall give preference to projects which promote the ownership, participation in ownership, or management of small business concerns by residents of urban areas of high concentration of unemployed or low-income individuals, and to projects which are planned and carried out with the participation of local businessmen.

(4) The financial assistance authorized by this subsection includes assistance advanced by grant, agreement, or contract, but does not include the procurement of plant or equipment, or goods or services.

(5) The Administration is authorized to make payments under grants and contracts entered into under this subsection in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants, with necessary adjustments on account of overpayments or underpayments.

(6) To the extent feasible, services under this subsection shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(7) The Administration shall provide for an independent and continuing evaluation of programs under this subsection, including full information on, and analysis of, the character and impact of managerial assistance provided, the location, income characteristics, and types of businesses and individuals assisted, and the extent to which private resources and skills have been involved in these programs. Such evaluation together with any recommendations deemed advisable by the Administration shall be included in the report required by section 639(a) of this title.

(8) The Administration shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of other Federal departments and agencies, so that contracts, subcontracts, and deposits made by the Federal Government or in connection with programs aided with Federal funds are placed in such a way as to further the purposes of this subsection and of subsection (i) of this section. The Administration shall provide for the continuing evaluation of programs under this subsection and the results of such evaluation together with recommendations shall be included in the report required by section 639(a) of this title.

(k) Functions relating to loans and financial assistance for projects providing technical or management assistance to individuals or enterprises eligible for assistance as small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals

In carrying out its functions under subsections (i) and (j) of this section, the Administration is authorized—

(1) to utilize, with their consent, the services and facilities of Federal agencies without reimbursement, and, with the consent of any State or political subdivision of a State, accept and utilize the services and facilities of such State or subdivision without reimbursement;

(2) to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this chapter, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise;

(3) to accept voluntary and uncompensated services, notwithstanding the provisions of section 665(b) of title 31; and

(4) to employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, except that no individual may be employed under the authority of this subsection for more than one hundred days in any fiscal year; to compensate individuals so employed at rates not in excess of $100 per diem, including traveltime; and to allow them, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5 for persons in the Government service employed intermittently, while so employed: *Provided, however,* That contracts for such employment may be renewed annually.

(Pub. L. 85-536, § 2[7], July 18, 1958, 72 Stat. 387; Pub. L. 85-699, title VI, § 602(c), Aug. 21, 1958, 72 Stat. 698; Pub. L. 86-367, § 2, Sept. 22, 1959, 73 Stat. 647; Pub. L. 87-70, title III, § 305[a], June 30, 1961, 75 Stat. 167; Pub. L. 87-305, § 9, Sept. 26, 1961, 75 Stat. 668; Pub. L. 88-264, § 1, Feb. 5, 1964, 78 Stat. 7; Pub. L. 88-560, title III, § 319, Sept. 2, 1964, 78 Stat. 794; Pub. L. 89-59, § 1(a), (b), June 30, 1965, 79 Stat. 206; Pub. L. 89-409, § 3(a), May 2, 1966, 80 Stat. 133;

Pub. L. 89-769, § 7(b), Nov. 6, 1966, 80 Stat. 1319; Pub. L. 90-104, title I, §§ 103, 104, Oct. 11, 1967, 81 Stat. 268; Pub. L. 90-448, title XI, § 1106(a), Aug. 1, 1968, 82 Stat. 567; Pub. L. 90-495, § 31, Aug. 23, 1968, 82 Stat. 835; Pub. L. 91-173, title V, § 504(a), (b), Dec. 30, 1969, 83 Stat. 802; Pub. L. 91-596, § 28(a), (b), Dec. 29, 1970, 84 Stat. 1618; Pub. L. 91-597, § 25(a), (b), Dec. 29, 1970, 84 Stat. 1633, 1634; Pub. L. 92-385, §§ 1(a), 2(a), Aug. 16, 1972, 86 Stat. 554, 555; Pub. L. 92-500, § 8(a), Oct. 18, 1972, 86 Stat. 898; Pub. L. 92-595, § 3(b), Oct. 27, 1972, 86 Stat. 1316; Pub. L. 93-237, §§ 2(a), (b), 3(a), 5, 6, Jan. 2, 1974, 87 Stat. 1023, 1024; Pub. L. 93-386, §§ 2(a)(4), 3(2), 8, 9, 12, Aug. 23, 1974, 88 Stat. 742, 746, 748, 749; Pub. L. 94-305, title I, §§ 108(b), 109, 111, 112(c), (d), 114, June 4, 1976, 90 Stat. 666, 667.)

REFERENCES IN TEXT

The "antitrust laws", referred to in subsec. (a)(6), are classified generally to chapter 1 (§ 1 et seq.) of this title.

The Federal Trade Commission Act, referred to in subsec. (a)(6), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see Tables volume.

The act of September 30, 1950, referred to in subsec. (b)(2)(A), was repealed by Pub. L. 91-606, title III, § 302(1), Dec. 31, 1970, 84 Stat. 1759, which enacted the Disaster Relief Act of 1970. Section 301(1) of Pub. L. 91-606 provided that references in any law to the Act of Sept. 30, 1950, should be deemed references to the Disaster Relief Act of 1970. The Disaster Relief Act of 1970 was itself repealed by Pub. L. 93-288, title VI, § 603, May 22, 1974, 88 Stat. 164, which enacted the Disaster Relief Act of 1974. The Disaster Relief Act of 1974 is classified to chapter 68 (§ 5121 et seq.) of Title 42, The Public Health and Welfare. Section 602(m) of Pub. L. 93-288 provided that references in any law to the Disaster Relief Act of 1970 should be deemed references to the Disaster Relief Act of 1974.

The Consolidated Farm and Rural Development Act (7 U.S.C. 1961), referred to in text, was in the original the "Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961)", Pub. L. 87-128, Aug. 8, 1961, 75 Stat. 307, which was redesignated the Consolidated Farm and Rural Development Act by Pub. L. 92-419, § 101, Aug. 30, 1972, 86 Stat. 657. The Consolidated Farm and Rural Development Act is classified generally to chapter 50 (§ 1921 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables volume.

Section 231 of the Disaster Relief Act of 1970, referred to in subsec. (b), was not included in the repeal of the Disaster Relief Act of 1970 by Pub. L. 93-288, title VI, § 603, May 22, 1974, 88 Stat. 164.

Reorganization Plan Numbered 2 of 1954, referred to in subsec. (c), is set out in the Appendix to Title 5, Governmental Organization and Employees.

Reorganization Plan Numbered 1 of 1957, referred to in subsec. (c), is set out in the Appendix to Title 5.

The Trade Expansion Act of 1962, referred to in subsec. (e), is Pub. L. 87-794, Oct. 11, 1962, 76 Stat. 872, which is classified principally to chapter 7 (§ 1801 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 19 and Tables volume.

Sections 314 and 315 of the Trade Expansion Act of 1962 [19 U.S.C. 1914 and 1915], referred to in subsec. (e), were repealed by Pub. L. 93-618, title VI, § 602(e), Jan. 3, 1975, 88 Stat. 2072. See sections 2344 and 2345 of Title 19, Customs Duties.

Section 2(a) of the Act of September 30, 1950 (42 U.S.C. 1855a(a)), referred to in subsec. (f), was repealed by Pub. L. 91-606, title III, § 302(1), Dec. 31, 1970, 84 Stat. 1759. See section 5122(2) of Title 42, The Public Health and Welfare.

The Federal Water Pollution Control Act, referred to in subsec. (g), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables volume.

The Economic Opportunity Act of 1964, referred to in subsec. (i)(3), is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508. Title III of the Act is classified generally to subchapter III (§ 2841 et seq.) of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 42 and Tables volume.

The Public Works and Economic Development Act of 1965, referred to in subsec. (i)(5)(D), is Pub. L. 89-136, Aug. 26, 1965, 79 Stat. 552, which is classified generally to chapter 38 (§ 3121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3121 of Title 42 and Tables volume.

CODIFICATION

Prior similar provisions were contained in section 207 of act July 30, 1953, ch. 282, title II, 67 Stat. 235, as amended by acts Aug. 9, 1955, ch. 628, §§ 2, 5, 69 Stat. 547; Feb. 2, 1956, ch. 29, §§ 2, 3, 70 Stat. 10; Pub. L. 85-335, Feb. 22, 1958, 72 Stat. 27, which was previosuly classified to this section. See Codification note under section 631 of this title.

Section 3109 of title 5, referred to in subsec. (k)(4), was substituted for "section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a)" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

Section 5703 of title 5, referred to in subsec. (k)(4), was substituted for "section 5 of such Act (5 U.S.C. 73b-2)" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5.

AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94-305, § 112(c), inserted reference to non-Federal sources.

Subsec. (a)(4)(A). Pub. L. 94-305, § 111, substituted "$500,000: Provided, That no such loan made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis shall exceed $350,000" for "$350,000".

Subsec. (a)(4)(C). Pub. L. 94-305, § 108(b), substituted provision relating to a twenty year maturity period for any portion of loan made for the purpose of acquiring real property or constructing facilities for provision relating to a ten year maturity for portion of loan made for purpose of constructing facilities.

Subsec. (b)(4). Pub. L. 94-305, § 112(d), eliminated proviso that loans under subsec. (b)(4) of this section include loans to persons who are engaged in business of raising livestock, and who suffer substancial injury as a result of animal disease.

Subsec. (b), foll. par. (8). Pub. L. 94-305, § 114, substituted provisions requiring interest rate on Administration's share of any loan made under this subsection not to exceed the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt for provisions requiring interest rate on Administration's share of any loan made under this subsection not to exceed 3 per centum per annum except for loans made under pars. (3), (5), (6), (7), or (8) in which the interest will not exceed either 2¾ per centum per annum or the average annual interest rate of all interest-bearing obligations of the United States then forming a part of the public debt.

Subsec. (i)(1). Pub. L. 94-305, § 109, substituted "$100,000" for "$50,000".

Subsec. (i)(3). Pub. L. 94-305, § 109, substituted "$100,000" for "$50,000".

1974—Subsec. (a)(4)(B). Pub. L. 93-386, § 8, substituted provisions for determining the rate of interest for the Administration's share of any loan for provisions setting forth the rate of interest for the Administration's share of any loan as not more than 5½ per centum per annum.

Subsec. (a)(5)(B). Pub. L. 93-386, § 8, substituted provisions for determining the rate of interest for the Administration's share of any loan for provisions setting forth the rate of interest for the Administration's share of any loan as not less than 3 nor more than 5 per centum per annum.

Subsec. (a)(8). Pub. L. 93-386, § 12, added subsec. (a)(8).

Subsec. (b)(4). Pub. L. 93-237, § 5, added proviso that loans under this paragraph include loans to persons who are engaged in the business of raising livestock and who suffer substantial economic injury as a result of animal disease.

Subsecs. (b)(5), (6), (7). Pub. L. 93-237, §§ 2 (a), (b), 6, consolidated into a single par. (5) the authority of the Small Business Administration contained in former par. (5) to make loans to small business concerns to meet the requirements of the Federal Coal Mine Health and Safety Act of 1969, the Egg Products Inspection Act, the Wholesome Poultry Products Act, and the Wholesome Meat Act, and former par. (6) to make loans to small business concerns to meet the requirements of the Occupational Safety and Health Act of 1970, expanded such authority to finance structural, operational, or other changes required in order to meet standards imposed by federal laws, or by state laws enacted in conformity with federal laws, redesignated former par. (7) as par. (6), and added par. (7).

Subsec. (b)(8). Pub. L. 93-386, § 9(a), added subsec. (b)(8).

Subsec. (b). Pub. L. 93-386, § 9(b), substituted "paragraph (3), (5), (6), (7), or (8)" for "paragraph (3), (5), (6), or (7)" in the first par. following the numbered pars.

Subsec. (g). Pub. L. 93-237, § 3(a), redesignated former subsec. (g) relating to loans to handicapped persons and organizations for handicapped as subsec. (h).

Subsec. (h). Pub. L. 93-237, § 3(a), redesignated former subsec. (g) relating to loans to handicapped persons and organizations for handicapped as subsec. (h).

Subsec. (h)(2). Pub. L. 93-386, § 3(2), added "The Administration's share of" preceding "any loan".

Subsecs. (i) to (k). Pub. L. 93-386, § 2(a)(4), added subsecs. (i) to (k).

1972—Subsec. (b). Pub. L. 92-385 added par. (7), and in material following the numbered paragraphs, added provisions relating to the administration of the disaster loan program in relation to disasters occurring between January 1, 1971 and July 1, 1973.

Subsec. (g). Pub. L. 92-500 added subsec. (g), relating to loans to small business concerns for water pollution control facilities.

Subsec. (h). Pub. L. 92-595 added subsec. (h), relating to loans to handicapped persons and organizations for handicapped.

1970—Subsec. (b). Pub. L. 91-597 added par. (5), which related to loans for additions or alterations required under the Egg Products Inspection Act, etc., and inserted reference to such par. (5).

Pub. L. 91-596 added par. (6) and inserted reference to par. (6) following reference to par. (5).

1969—Subsec. (b). Pub. L. 91-173 added par. (5), and inserted reference to par. (5) following reference to par. (3).

1968—Subsec. (b)(1). Pub. L. 90-448 empowered the Administration to make loans because of riots or civil disorders.

Subsec. (b)(3). Pub. L. 90-495 added continuing in business at its existing location, purchasing a business, and establishing a new business to the list of purposes for which loans may be made, and extended the causes of substantial economic injury of the concern involved to include its location in, adjacent to, or near a federally aided urban renewal program, highway project, or other construction project using federal funds.

1967—Subsec. (a)(4). Pub. L. 90-104, § 103, extended maturity date for construction loans from ten to fifteen years.

Subsec. (f). Pub. L. 90-104, § 104, redesignated subsec. (e), added by Pub. L. 89-769, as (f).

1966—Subsec. (e). Pub. L. 89-409 added subsec. (e).

Pub. L. 89-769 added subsec. (e) which provided for assistance to privately owned higher education in major disaster areas and repayment.

1965—Subsec. (b). Pub. L. 89-59, § 1(a), increased the maturity of disaster loans from twenty to thirty years, and authorized suspension of principal and interest payments and extension of date of maturity for five year period.

Subsec. (c). Pub. L. 89-59, § 1(b), designated existing provisions as par. (1) and added par. (2).

1964—Subsecs. (b)(2), (4). Pub. L. 88-264 extended the provisions of par. (2) to any small business affected by disasters other than drought or excessive rainfall and added par. (4) for disaster loans to any such business suffering economic injuries through natural or undetermined causes.

Subsec. (b)(3). Pub. L. 88-560 provided that the purposes of a loan under this paragraph may include the purchase or construction of other premises whether or not the borrower owned the premises from which it was displaced.

1961—Subsec. (b). Pub. L. 87-70 added par. (3), and inserted provisions limiting the interest rate in the case of loans made pursuant to par. (3) to not more than the higher of (A) 2¾ per centum per annum, or (B) the average annual interest rate on all interest-bearing obligations forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum, plus one-quarter of 1 per centum per annum.

Subsec. (d). Pub. L. 87-305 empowered the Administration to make grants to any corporation formed by two or more eligible entities described in the text, authorized it to recommend to grant applicants particular studies or research, eliminated the limitation of one grant to a State, and conditioned grants to the procurement of additional amounts from sources other than the Administration.

1959—Subsec. (d). Pub. L. 86-367 deleted the provision for making the grants from the fund established in the Treasury by section 602(b) of the Small Business Investment Act of 1958.

1958—Subsec. (d). Pub. L. 85-699 added subsec. (d).

Effective Date of 1972 Amendment

Section 1(b) of Pub. L. 92-385 provided that: "The last paragraph of the amendment made by subsection (a) [last paragraph of subsec. (b) of this section] shall apply only with respect to loans made on or after the date of enactment of this Act [Aug. 16, 1972]."

Effective Date of 1970 Amendments

For effective date of amendment by Pub. L. 91-597 see section 29 of Pub. L. 91-597, set out as a note under section 1031 of Title 21, Food and Drugs.

Amendment by Pub. L. 91-596 effective 120 days after Dec. 29, 1970, see section 34 of Pub. L. 91-596, set out as a note under section 651 of Title 29, Labor.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of Title 23, Highways.

Effective Date of 1966 Amendment

Section 3(c) of Pub. L. 89-409 provided that: "This section [which added subsec. (e) of this section, repealed section 637a of this title, and enacted provisions set out as a note under section 633 of this title] shall take effect on July 1, 1966."

Disaster Relief Authority; Study and Report on Consolidation

Section 101 of Pub. L. 94-305 provided that: "The President shall undertake a comprehensive review of all Federal disaster loan authorities and shall make a report to the Congress, not later than December 1, 1976, containing such recommendations and legislative proposals, including possible consolidation of Federal disaster loan authorities, as may be demonstrated to be necessary and appropriate to assure the most effective and efficient delivery of disaster relief. Such study shall give particular emphasis to alleviating any extraordinary burden the management of Federal disaster loan programs may impose on an agency."

Disaster Loans; Interest Rate; Cancellation of Loans

Section 9 of Pub. L. 93-24, Apr. 20, 1973, 87 Stat. 25, provided that: "Notwithstanding the provisions of any other law, any loan made by the Small Business Administration in connection with any disaster occurring on or after the date of enactment of this Act [Apr. 20, 1973] under sections 7(b)(1), (2), or (4) of the Small Business Act (15 U.S.C. 636(b)(1), (2), or (4)) [subsec. (b)(1), (2), or (4) of this section] shall bear interest at the rate determined under section 324 of the Consolidated Farm and Rural Development Act, as amended by section 4 of this Act [section 1964 of Title 7, Agriculture]. No portion of any such loan shall be subject to cancellation under the provisions of any law."

Interest Rates on Loans to Meet Regulatory Standards

Section 2(d) of Pub. L. 93-237 provided that: "In no case shall the interest rate charged for loans to meet regulatory standards be lower than loans made in connection with physical disasters."

Election of Benefits

Section 1(c) of Pub. L. 92-385 provided that: "Any person who (1) suffers any loss or damage as a result of a major disaster as determined by the President which occurred prior to the date of enactment of this Act [August 16, 1972], (2) is eligible for assistance under the amendment made by subsection (a), and (3) is otherwise eligible for benefits greater than those provided by the amendment made by subsection (a), may elect to receive such greater benefits."

Fund for Management Counseling

Subsecs. (a) and (b) of section 602 of Pub. L. 85-699 provided that:

"(a) Within sixty days after the enactment of this Act [August 21, 1958], each Federal Reserve bank shall pay to the United States the aggregate amount which the Secretary of the Treasury has heretofore paid to such bank under the provisions of section 13b of the Federal Reserve Act [section 352a of Title 12, Banks and Banking]; and such payment shall constitute a full discharge of any obligation or liability of the Federal Reserve bank to the United States or to the Secretary of the Treasury arising out of subsection (e) of said section 13b [subsec. (e) of section 352a of Title 12, Banks and Banking] or out of any agreement thereunder.

"(b) The amounts repaid to the United States pursuant to subsection (a) of this section shall be covered into a special fund in the Treasury which shall be available for grants under section 7(d) of the Small Business Act [subsec. (d) of this section]. Any remaining balance of funds set aside in the Treasury for payments under section 13b of the Federal Reserve Act [section 352a of Title 12] shall be covered into the Treasury as miscellaneous receipts."

Prior Provisions

Provisions similar to those comprising subsec. (e) of this section were contained in section 2(a) and (b) of Pub. L. 87-550, July 25, 1962, 76 Stat. 221 (formerly classified to section 637a(a) and (b) of this title) prior to repeal thereof by section 3(b) of Pub. L. 89-409.

Loans for Modifications of Mining Facilities and Equipment

Section 504(d) of Pub. L. 91-173 provided that: "Loans may also be made or guaranteed for the purposes set forth in section 7(b)(5) of the Small Business Act, as amended [subsec. (b)(5) of this section], pursuant to the provisions of section 202 of the Public Works and Economic Development Act of 1965, as amended [section 3142 of Title 42]."

Section Referred to in Other Sections

This section is referred to in sections 631, 633, 634, 636a, 637 of this title; title 7 section 1964; title 19 section 2345; title 42 section 3142-1.

§ 636a. Small business disaster loans

(a) In the administration of the disaster loan program under section 636(b)(1), (2), and (4) of this title, in the case of property loss or damage or injury resulting from a major disaster as determined by the President or a disaster as determined by the Administrator, the Small Business Administration—

(1) to the extent such loss or damage or injury is not compensated for by insurance or otherwise (A) shall, on the part of any loan in excess of $500, cancel the principal of the loan, except that the total amount so canceled shall not exceed $2,500, except that this clause (A) shall apply only to loans made to cover losses and damage and injury resulting from major disasters as determined by the President, and (B) may defer interest payments or principal payments, or both, in whole or in part, on any loan made under this section during the first three years of the term of the loan except that any such deferred payments shall bear interest at the rate determined under section 636b of this title.

(2) to the extent such injury, loss, or damage is not compensated for by insurance or otherwise, may grant any loan for repair, rehabilitation, or replacement of property damaged, or destroyed, without regard to whether the required financial assistance is otherwise available from private sources.

(3) may, in the case of the total destruction or substantial property damage of a home or business concern, refinance any mortgage or other liens outstanding against the destroyed or damaged property if such property is to be repaired, rehabilitated, or replaced, except that the amount refinanced shall not exceed the amount of the physical loss sustained. Any such refinancing shall be subject to the provisions of clauses (1) and (2) of this section.

(b) Loans to which this section applies may also be made for the purpose of providing small business concerns with working capital, the payment of operating expenses, and any purpose for which loans may be made under section 636(a) of this title.

(Pub. L. 91-606, title II, § 231, Dec. 31, 1970, 84 Stat. 1752; Pub. L. 92-385, § 6, Aug. 16, 1972, 86 Stat. 559.)

CODIFICATION

Section was enacted as part of the Disaster Relief Act of 1970, and not as part of the Small Business Act which comprises this chapter. Section was formerly classified to section 4451 of Title 42, The Public Health and Welfare.

AMENDMENTS

1972—Pub. L. 92-385 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE

Section effective Apr. 1, 1970, see section 304 of Pub. L. 91-606.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 636, 636b, 636c of this title.

§ 636b. Disaster loan interest rates

Any loan made under section 636a of this title and section 4452 of title 42 shall not exceed the current cost of repairing or replacing the disaster injury, loss, or damage in conformity with current codes and specifications. Any loan made under sections 636a and 636d of this title, and sections 3538 and 4452 of title 42 shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of ten to twelve years reduced by not to exceed 2 per centum per annum. In no event shall any loan made under this section bear interest at a rate in excess of 6 per centum per annum.

(Pub. L. 91-606, title II, § 234, Dec. 31, 1970, 84 Stat. 1754.)

REFERENCES IN TEXT

Section 4452 of title 42, referred to in text, was repealed by Pub. L. 93-24, § 7, Apr. 20, 1973, 87 Stat. 25.

CODIFICATION

Section was enacted as part of the Disaster Relief Act of 1970, and not as part of the Small Business Act which comprises this chapter. Section was formerly classified to section 4453 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Dec. 31, 1970, see section 304 of Pub. L. 91-606.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 636a, 636d of this title.

§ 636c. Age of applicant for disaster loans

In the administration of any Federal disaster loan program under the authority of section 636a of this title, section 4452 of title 42, or section 233 of Public Law 91-606, the age of any adult loan applicant shall not be considered in determining whether such loan should be made or the amount of such loan.

(Pub. L. 91-606, title II, § 235, Dec. 31, 1970, 84 Stat. 1754.)

REFERENCES IN TEXT

Section 4452 of title 42, referred to in text, was repealed by Pub. L. 93-24, § 7, Apr. 20, 1973, 87 Stat. 25.

Section 233 of Public Law 91-606, referred to in text, amended section 1820(a)(2), (f) of Title 38, Veterans' Benefits.

CODIFICATION

Section was enacted as part of the Disaster Relief Act of 1970, and not as part of the Small Business Act which comprises this chapter. Section was formerly classified to section 4454 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Dec. 31, 1970, see section 304 of Pub. L. 91-606.

§ 636d. Disaster aid to major sources of employment

(a) The Small Business Administration in the case of a nonagricultural enterprise, and the Farmers Home Administration in the case of an agricultural enterprise, are authorized to provide any industrial, commercial, agricultural, or other enterprise, which has constituted a major source of employment in an area suffering a major disaster and which is no longer in substantial operation as a result of such disaster, a loan in such amount as may be necessary to enable such enterprise to resume operations in order to assist in restoring the economic viability of the disaster area. Loans authorized by this section shall be made without regard to limitations on the size of loans which may otherwise be imposed by any other provision of law or regulations promulgated pursuant thereto.

(b) Assistance under this section shall be in addition to any other Federal disaster assistance, except that such other assistance may be adjusted or modified to the extent deemed appropriate by the Director under the authority of section 4418 of title 42. Any loan made under this section shall be subject to the interest requirements of section 636b of this title, but the President, if he deems it necessary, may defer payments of principal and interest for a period not to exceed three years after the date of the loan. Any such deferred payments shall bear interest at the rate determined under section 636b of this title.

(Pub. L. 91-606, title II, § 237, Dec. 31, 1970, 84 Stat. 1754.)

REFERENCES IN TEXT

Section 4418 of title 42, referred to in subsec. (b), was repealed by Pub. L. 93-288, title VI, § 603, May 22, 1974, 88 Stat. 164. Provisions similar to former section 4418 of Title 42, The Public Health and Welfare, are now contained in section 5155 of Title 42.

CODIFICATION

Section was enacted as part of the Disaster Relief Act of 1970, and not as part of the Small Business Act which comprises this chapter. Section was formerly classified to section 4456 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Aug. 1, 1969, see, section 304 of Pub. L. 91-606.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 636b of this title.

§ 637. Additional powers

(a) Procurement contracts; sub-contracts to small-business concerns

It shall be the duty of the Administration and it is empowered, whenever it determines such action is necessary—

(1) to enter into contracts with the United States Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, or materials to the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent to perform any specific Government procurement contract to be let by any such officer, such officer shall be authorized in his discretion to let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer; and

(2) to arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to small-business concerns or others for the manufacture, supply, or assembly of such articles, equipment, supplies, or materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts.

(b) Procurement and property disposal powers; determination of small-business concerns

It shall also be the duty of the Administration and it is empowered, whenever it determines such action is necessary—

(1)(A) to provide technical and managerial aids to small-business concerns, by advising and counseling on matters in connection with Government procurement and property disposal and on policies, principles, and practices of good management, including but not limited to cost accounting, methods of financing, business insurance, accident control, wage incentives, and methods engineering, by cooperating and advising with voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions and with other Federal and State agencies, by maintaining a clearinghouse for information concerning the managing, financing, and operation of small-business enterprises, by disseminating such information, and by such other activities as are deemed appropriate by the Administration; and

(B) in the case of any individual or group of persons cooperating with it in furtherance of the purposes of subparagraph (A), (i) to allow such an individual or group such use of the Administration's office facilities and related materials and services as the Administration deems appropriate; and (ii) to pay the transportation expenses and a per diem allowance in accordance with section 5703 of title 5 to any such individual for travel and subsistence expenses incurred at the request of the Administration in connection with travel to a point more than fifty miles distant from the home of that individual in providing gratuitous services to small businessmen in furtherance of the purposes of subparagraph (A) or in connection with attendance at meetings sponsored by the Administration;

(2) to make a complete inventory of all productive facilities of small-business concerns or to arrange for such inventory to be made by any other governmental agency which has the facilities. In making any such inventory, the appropriate agencies in the several States may be requested to furnish an inventory of the productive facilities of small-business concerns in each respective State if such an inventory is available or in prospect;

(3) to coordinate and to ascertain the means by which the productive capacity of small-business concerns can be most effectively utilized;

(4) to consult and cooperate with officers of the Government having procurement or property disposal powers, in order to utilize the potential productive capacity of plants operated by small-business concerns;

(5) to obtain information as to methods and practices which Government prime contractors utilize in letting subcontracts and to take action to encourage the letting of subcontracts by prime contractors to small-business concerns at prices and on conditions and terms which are fair and equitable;

(6) to determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated "small-business concerns" for the purpose of effectuating the provisions of this chapter. To carry out this purpose the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a "small-business concern" in accordance with the criteria expressed in this chapter. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a "small-business concern". Offices of the Government having procurement or lending powers, or engaging in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to be designated "small-business concerns", as authorized and directed under this paragraph;

(7) to certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property, with respect to the competency, as to capacity and credit, of any small-business concern or group of such concerns to perform a specific Government contract. In any case in which a small-business concern or group of such concerns has been certified by or under the authority of the Administration to be a competent Government contractor with respect to capacity and credit as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and are authorized to let such Government contract to such concern or group of concerns without requiring it to meet any

other requirement with respect to capacity and credit;

(8) to obtain from any Federal department, establishment, or agency engaged in procurement or in the financing of procurement or production such reports concerning the letting of contracts and subcontracts and the making of loans to business concerns as it may deem pertinent in carrying out its functions under this chapter;

(9) to obtain from any Federal department, establishment, or agency engaged in the disposal of Federal property such reports concerning the solicitation of bids, time of sale, or otherwise as it may deem pertinent in carrying out its functions under this chapter;

(10) to obtain from suppliers of materials information pertaining to the method of filling orders and the bases for allocating their supply, whenever it appears that any small business is unable to obtain materials from its normal sources;

(11) to make studies and recommendations to the appropriate Federal agencies to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, to insure that a fair proportion of Government contracts for research and development be placed with small-business concerns, to insure that a fair proportion of the total sales of Government property be made to small-business concerns, and to insure a fair and equitable share of materials, supplies, and equipment to small-business concerns;

(12) to consult and cooperate with all Government agencies for the purpose of insuring that small-business concerns shall receive fair and reasonable treatment from such agencies;

(13) to establish such advisory boards and committees as may be necessary to achieve the purposes of this chapter and of the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.]; to call meetings of such boards and committees from time to time; to pay the transportation expenses and a per diem allowance in accordance with section 5703 of title 5 to the members of such boards and committees for travel and subsistence expenses incurred at the request of the Administration in connection with travel to points more than fifty miles distant from the homes of such members in attending the meeting of such boards and committees; and to rent temporarily, within the District of Columbia or elsewhere, such hotel or other accommodations as are needed to facilitate the conduct of such meetings;

(14) to provide at the earliest practicable time such information and assistance as may be appropriate, including information concerning eligibility for loans under section 636(b)(3) of this title, to local public agencies (as defined in section 110(h) of the Housing Act of 1949 [42 U.S.C. 1460(h)]) and to small-business concerns to be displaced by federally aided urban renewal projects in order to assist such small-business concerns in reestablishing their operations; and

(15) to disseminate, without regard to the provisions of section 3204 of title 39 data and information, in such form as it shall deem appropriate, to public agencies, private organizations, and the general public.

(c) Studies and recommendations

The Administration shall from time to time make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and shall make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business.

(d) Small business subcontracting program; regulations

(1) Within ninety days after September 26, 1961, the Administrator, the Secretary of Defense, and the Administrator of General Services shall cooperatively develop a small business subcontracting program which shall contain such provisions as may be appropriate to (A) enable small business concerns to be considered fairly as subcontractors and suppliers to contractors performing work or rendering services as prime contractors or subcontractors under Government procurement contracts, (B) insure that such prime contractors and subcontractors will consult through the appropriate procuring agency with the Administration when requested by the Administration, and (C) enable the Administration to obtain from any Government procurement agency such available or reasonably obtainable information and records concerning subcontracting by its prime contractors and their subcontractors as the Administration may deem necessary: *Provided*, That such program shall not authorize the Administration to (i) prescribe the extent to which any contractor or subcontractor shall subcontract, (ii) specify the business concerns to which subcontracts shall be granted, or (iii) vest in the Administration authority respecting the administration of individual prime contracts or subcontracts: *Provided further*, That such program shall provide that in evaluating bids or selecting contractors for negotiated contracts, the extensive use of subcontractors by a proposed contractor shall be considered a favorable factor. The Secretary of Defense and the Administrator of General Services each shall promulgate regulations implementing the program as developed: *Provided*, That prior to the promulgation of such regulations, or any changes therein, the concurrence of the Administration shall be obtained, and if such concurrence cannot be obtained the matter in disagreement shall be submitted to the President who shall make the final determination. In addition, the Administrator of General Services and the Secretary of Defense may issue such other regulations concerning subcontracting not inconsistent with the small business subcontracting program as they each deem necessary or appropriate to effectuate their functions and responsibilities.

(2) Every contract for property or services (including but not limited to contracts for research and development, maintenance, repair and construction, but excluding contracts to be performed entirely outside of the United States or its territories) in excess of $1,000,000 made

by a Government department or agency, which in the opinion of the procuring agency offers substantial subcontracting possibilities, shall require the contractor to conform to the small business subcontracting program promulgated under this subsection, and to insert in all subcontracts and purchase orders in excess of $500,000 which offer substantial possibilities for further subcontracting a provision requiring the subcontractor or supplier to conform to such small business subcontracting program.

(3) The Administration shall include in any report filed under section 639(b) of this title information, and such recommendations as it may deem appropriate, with respect to the administration of the small business subcontracting program established under this subsection.

(4) Nothing in this subsection shall be construed to authorize the Administrator, the Secretary of Defense, or the Administrator of General Services to secure and disseminate technical data or processes developed by any business concern at its own expense.

(e) Notice and publication of procurement actions; exceptions

It shall be the duty of the Secretary of Commerce, and he is empowered, to obtain notice of all proposed defense procurement actions of $10,000 and above, and all civilian procurement actions of $5,000 and above, from any Federal department, establishment, or agency engaged in procurement of supplies and services in the United States; and to publicize such notices in the daily publication "United States Department of Commerce Synopsis of the United States Government Proposed Procurement, Sales, and Contract Awards", immediately after the necessity for the procurement is established; except that nothing herein shall require publication of such notices with respect to those procurements (1) which for security reasons are of a classified nature, or (2) which involve perishable subsistence supplies, or (3) which are for utility services and the procuring agency in accordance with applicable law has predetermined the utility concern to whom the award will be made, or (4) which are of such unusual and compelling emergency that the Government would be seriously injured if bids or offers were permitted to be made more than 15 days after the issuance of the invitation for bids or solicitation for proposals, or (5) which are made by an order placed under an existing contract, or (6) which are made from another Government department or agency, or a mandatory source of supply, or (7) which are for personal or professional services, or (8) which are for services from educational institutions, or (9) in which only foreign sources are to be solicited, or (10) for which it is determined in writing by the procuring agency, with the concurrence of the Administrator, that advance publicity is not appropriate or reasonable.

(Pub. L. 85-536, § 2(8), July 18, 1958, 72 Stat. 389; Pub. L. 87-305, §§ 7, 8, Sept. 26, 1961, 75 Stat. 667, 668; Pub. L. 88-560, title III, § 305(c), Sept. 2, 1964, 78 Stat. 786; Pub. L. 89-754, title X, § 1017, Nov. 3, 1966, 80 Stat. 1295; Pub. L. 90-104, title I, §§ 105-107, Oct. 11, 1967, 81 Stat. 268, 269; Pub. L. 91-375, § 6(g), Aug. 12, 1970, 84 Stat. 776.)

References in Text

The Small Business Investment Act of 1958, referred to in subsec. (b)(13), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§ 661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables volume.

Codification

Prior similar provisions were contained in sections 207(b)(2), (b)(4), 208, 210, 212 and 216 of act July 30, 1953, ch. 282, title II, 67 Stat. 235-239, as amended by acts Aug. 9, 1955, ch. 628, §§ 2, 5, 7, 69 Stat. 547, 550; Feb. 2, 1956, ch. 29, §§ 2, 3, 70 Stat. 10, which were previously classified to this section and sections 636, 639, 641, and 645 of this title. See Codification note under section 631 of this title.

Amendments

1970—Subsec. (b)(15). Pub. L. 91-375 substituted "section 3204 of Title 39" for "section 4154 of Title 39".

1967—Subsec. (b)(1)(B). Pub. L. 90-104, § 105, designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(13). Pub. L. 90-104, § 106, substituted "advisory boards and committees" for "small business advisory boards and committees truly representative of small business", included achievement of purposes of the Small Business Investment Act of 1958, and required the Administrator to call board and committee meetings, pay transportation expenses and per diem allowances, and rent temporarily necessary accommodations to facilitate conduct of meetings.

Subsec. (b)(15). Pub. L. 90-104, § 107, added par. (15).

1966—Subsec. (b)(1). Pub. L. 89-754 designated existing provisions as subpar. (A) and added subpar. (B).

1964—Subsec. (b). Pub. L. 88-560 added par. (14).

1961—Subsec. (d). Pub. L. 87-305, § 7, added subsec. (d).

Subsec. (e). Pub. L. 87-305, § 8, added subsec. (e).

Effective Date of 1970 Amendment

For effective date of amendment by Pub. L. 91-375, see section 15(a) of Pub. L. 91-375, set out as a note preceding section 101 of Title 39, Postal Service.

Transfer of Functions

Transfer to Director of Action of functions of Small Business Administration under subsec. (b) of this section insofar as they relate to individuals or groups of persons cooperating with it in the furtherance of the purposes of this section, such individuals or groups of persons, in providing technical and managerial aids to small concerns, remaining subject to direction of Small Business Administration, see section 601 of Pub. L. 93-113, set out as a note under section 5041 of Title 42, The Public Health and Welfare, which superseded section 2(a)(3) of Reorg. Plan No. 1 of 1971, eff. July 1, 1971, 36 F.R. 11181, 85 Stat. 819, set out in the Appendix to Title 5, Government Organization and Employees.

Termination of Advisory Boards and Committees

Advisory Boards and Committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a board or committee established by the President or an officer of the Federal Government, such board or committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board or committee established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in the Appendix to Title 5, Government Organization and Employees.

Section Referred to in Other Sections

This section is referred to in sections 633, 634d, 636 of this title; title 42 sections 5032, 5059.

§ 637a. Repealed. Pub. L. 89-409, § 3(b), May 2, 1966, 80 Stat. 133

Section, Pub. L. 87-550, § 2, July 25, 1962, 76 Stat. 221, authorized the Administration to make loans to assist in adjusting to competition from imports, described such authority as additional to that under the Small Business Act, provided for application of the Trade Expansion Act of 1962, authorized appropriations, and provided for an effective date, and is now covered by section 636(e) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective on July 1, 1966, see section 3(c) of Pub. L. 89-409, set out as a note under section 636 of this title.

§ 638. Research and development

(a) Declaration of policy

Research and development are major factors in the growth and progress of industry and the national economy. The expense of carrying on research and development programs is beyond the means of many small-business concerns, and such concerns are handicapped in obtaining the benefits of research and development programs conducted at Government expense. These small-business concerns are thereby placed at a competitive disadvantage. This weakens the competitive free enterprise system and prevents the orderly development of the national economy. It is the policy of the Congress that assistance be given to small-business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy.

(b) Assistance to small-business concerns

It shall be the duty of the Administration, and it is empowered—

(1) to assist small-business concerns to obtain Government contracts for research and development;

(2) to assist small-business concerns to obtain the benefits of research and development performed under Government contracts or at Government expense; and

(3) to provide technical assistance to small-business concerns to accomplish the purposes of this section.

(c) Consultation and cooperation with Governmental agencies; studies and recommendations

The Administration is authorized to consult and cooperate with all Government agencies and to make studies and recommendations to such agencies, and such agencies are authorized and directed to cooperate with the Administration in order to carry out and to accomplish the purposes of this section.

(d) Joint programs; approval of agreements; withdrawal of approval; publication in Federal Register

(1) The Administrator is authorized to consult with representatives of small-business concerns with a view to assisting and encouraging such firms to undertake joint programs for research and development carried out through such corporate or other mechanism as may be most appropriate for the purpose. Such joint programs may, among other things, include the following purposes:

(A) to construct, acquire, or establish laboratories and other facilities for the conduct of research;

(B) to undertake and utilize applied research;

(C) to collect research information related to a particular industry and disseminate it to participating members;

(D) to conduct applied research on a protected, proprietary, and contractual basis with member or nonmember firms, Government agencies, and others;

(E) to prosecute applications for patents and render patent services for participating members; and

(F) to negotiate and grant licenses under patents held under the joint program, and to establish corporations designed to exploit particular patents obtained by it.

(2) The Administrator may, after consultation with the Attorney General and the Chairman of the Federal Trade Commission, and with the prior written approval of the Attorney General, approve any agreement between small-business firms providing for a joint program of research and development, if the Administrator finds that the joint program proposed will maintain and strengthen the free enterprise system and the economy of the Nation. The Administrator or the Attorney General may at any time withdraw his approval of the agreement and the joint program of research and development covered thereby, if he finds that the agreement or the joint program carried on under it is no longer in the best interests of the competitive free enterprise system and the economy of the Nation. A copy of the statement of any such finding and approval intended to be within the coverage of this subsection, and a copy of any modification or withdrawal of approval, shall be published in the Federal Register. The authority conferred by this subsection on the Administrator shall not be delegated by him.

(3) No act or omission to act pursuant to and within the scope of any joint program for research and development, under an agreement approved by the Administrator under this subsection, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act [15 U.S.C. 41 et seq.]. Upon publication in the Federal Register of the notice of withdrawal of his approval of the agreement granted under this subsection, either by the Administrator or by the Attorney General, the provisions of this subsection shall not apply to any subsequent act or omission to act by reason of such agreement or approval.

(Pub. L. 85-536, § 2[9], July 18, 1958, 72 Stat. 391.)

REFERENCES IN TEXT

The "antitrust laws", referred to in subsec. (d)(3), are classified generally to chapter 1 (§ 1 et seq.) of this title.

The Federal Trade Commission Act, referred to in subsec. (d)(3), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

CODIFICATION

Section 209 of act July 30, 1953, ch. 282, title II, 67 Stat. 237, which was previously classified to this section, is now covered by section 645 of this title. See Codification note under section 631 of this title.

§ 639. Reporting requirements and agency cooperation

(a) Annual reports to President and Congressional officers

The Administration shall, as soon as practicable each fiscal year make a comprehensive annual report to the President, the President of the Senate, and the Speaker of the House of Representatives. Such report shall include a description of the state of small business in the Nation and the several States, and a description of the operations of the Administration under this chapter, including, but not limited to, the general lending, disaster relief, Government regulation relief, procurement and property disposal, research and development, technical assistance, dissemination of data and information, and other functions under the jurisdiction of the Administration during the previous fiscal year. Such report shall contain recommendations for strengthening or improving such programs, or, when necessary or desirable to implement more effectively congressional policies and proposals, for establishing new or alternative programs. In addition, such report shall include the names of the business concerns to whom contracts are let and for whom financing is arranged by the Administration, together with the amounts involved.

(b) Report of expenditures in conduct of principal activities

The Administration shall make a report to the President, the President of the Senate, and the Speaker of the House of Representatives, to the Senate Select Committee on Small Business, and to the House Select Committee to Conduct a Study and Investigation of the Problems of Small Business, as soon as practicable each fiscal year, showing as accurately as possible for each such period the amount of funds appropriated to it that it has expended in the conduct of each of its principal activities such as lending, procurement, contracting, and providing technical and managerial aids.

(c) Surveys for determination of factors tending to injure small business; reports and recommendations

(1) The Attorney General is directed to make, or direct the Federal Trade Commission to make for him, surveys of any activity of the Government which may affect small business, for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, promote undue concentration of economic power, or otherwise injure small business.

(2) The Attorney General shall submit to the Congress and the President, at such times as he deems desirable, but not less than once every year, reports setting forth the results of such surveys and including such recommendations as he may deem desirable.

(d) Monthly report of Department of Defense

For the purpose of aiding in carrying out the national policy to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, and to maintain and strengthen the overall economy of the Nation, the Department of Defense shall make a monthly report to the President, the President of the Senate, and the Speaker of the House of Representatives not less than forty-five days after the close of the month, showing the amount of funds appropriated to the Department of Defense which have been expended, obligated, or contracted to be spent with small-business concerns and the amount of such funds expended, obligated, or contracted to be spent with firms other than small business in the same fields of operation; and such monthly reports shall show separately the funds expended, obligated, or contracted to be spent for basic and applied scientific research and development.

(e) Retention of records

The Administration shall retain all correspondence, records of inquiries, memoranda, reports, books, and records, including memoranda as to all investigations conducted by or for the Administration, for a period of at least one year from the date of each thereof, and shall at all times keep the same available for inspection and examination by the Senate Select Committee on Small Business and the House Select Committee To Conduct a Study and Investigation of the Problems of Small Business, or their duly authorized representatives.

(f) Consultation and cooperation with Governmental departments and agencies

To the extent deemed necessary by the Administrator to protect and preserve small-business interests, the Administration shall consult and cooperate with other departments and agencies of the Federal Government in the formulation by the Administration of policies affecting small-business concerns. When requested by the Administrator, each department and agency of the Federal Government shall consult and cooperate with the Administration in the formulation by such department or agency of policies affecting small-business concerns, in order to insure that small-business interests will be recognized, protected, and preserved. This subsection shall not require any department or agency to consult or cooperate with the Administration in any case where the head of such department or agency determines that such consultation or cooperation would unduly delay action which must be taken by such department or agency to protect the national interest in an emergency.

(g) Annual report of employee conduct complaints received or acted upon and investigations undertaken by Administration.

The Administration shall transmit, not later than December 31 of each year, to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking and Currency of the House of Representatives a sealed report with respect to—

(1) complaints alleging illegal conduct by employees of the Administration which were received or acted upon by the Administration during the preceding fiscal year; and

(2) investigations undertaken by the Administration, including external and internal audits and security and investigation reports.

(Pub. L. 85-536, § 2[10], July 18, 1958, 72 Stat. 393; Pub. L. 87-305, § 5(a), Sept. 26, 1961, 75 Stat. 666; Pub. L. 89-348, § 1(3), Nov. 8, 1965, 79 Stat. 1310; Pub. L. 93-237, § 7, Jan. 2, 1974, 87 Stat. 1025; Pub. L. 93-386, § 4, Aug. 23, 1974, 88 Stat. 746; Pub. L. 93-608, § 3(4), (5), Jan. 2, 1975, 88 Stat. 1972.)

CODIFICATION

Prior similar provisions were contained in sections 211 and 215 of act July 30, 1953, ch. 282, title II, 67 Stat. 237, 238, as amended by act Aug. 9, 1955, ch. 628, §§ 6, 10, 11, 69 Stat. 550, 551, which were previously classified to sections 640 and 644 of this title. The provisions of section 210 of act July 30, 1953, formerly classified to this section, were transferred to section 2 [8] of Pub. L. 85-536, and are now classified to section 637(b)(2) of this title. See Codification note under section 631 of this title.

AMENDMENTS

1975—Subsec. (a). Pub. L. 93-608, § 3(4), substituted "fiscal" for "calendar" in two places and struck out provisions requiring report to contain information on the progress of the Administration in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation and other information deemed appropriate by the Administration.

Subsec. (b). Pub. L. 93-608, § 3(5), substituted "as soon as practicable each fiscal year" for "on December 31 of each year".

1974—Subsec. (a). Pub. L. 93-237 substituted provisions requiring the Administration to make comprehensive annual reports to the President and Congressional Officers as soon as practicable describing the state of the small business in the Nation and the States, the operations of the Administration, and recommendations for legislation, for provisions requiring the Administration to make reports on Dec. 31 of each year to the President and Congressional Officers.

Subsec. (g). Pub. L. 93-386 added subsec. (g).

1965-Subsec. (a). Pub. L. 89-348 repealed provision of subsec. (a) which required as part of the annual report to the President and to Congress by the Small Business Administration, a report on the progress in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation.

1961—Subsec. (a). Pub. L. 87-305, § 5(a)(1), changed the reporting requirements from semiannual to annual basis and required the inclusion of information on the progress of the Administration in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation, such requirement to be in lieu of progress reports on a quarterly basis.

Subsec. (b). Pub. L. 87-305, § 5(a)(2), deleted "June 30 and" preceding "December 31".

Subsec. (c). Pub. L. 87-305, § 5(a)(3), designated existing provisions of first and second sentences as pars. (1) and (2), substituted "direct" for "request" and "promote undue concentration of economic power, or otherwise injure small business" for "injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this chapter" and inserted "of any activity of the Government which may affect small business," following "surveys" in par. (1) and required reports to be made not less than once every year in par. (2).

CHANGE OF NAME

The name of the Committee on Banking and Currency of the House of Representatives was changed to Committee on Banking, Finance and Urban Affairs, effective Jan. 4, 1977, by House Resolution 5, 95th Congress.

EX. ORD. NO. 11518. INCREASED REPRESENTATION OF INTERESTS OF SMALL BUSINESS CONCERNS BEFORE GOVERNMENT DEPARTMENTS AND AGENCIES

Ex. Ord. No. 11518, Mar. 20, 1970, 35 F.R. 4939, provided:

WHEREAS the policy of the Government of the United States is to insure the continuance of a strong and healthy free enterprise system; and

WHEREAS the existence of a strong and healthy free enterprise system is directly related to the well being and competitive strength of small business concerns and their opportunities for free entry into business, growth, and expansion; and

WHEREAS the departments and agencies of the United States Government exercise, through their regulatory and other programs and practices, a significant influence on the well being and competitive strength of business concerns, particularly minority-owned business concerns, and their opportunities for free entry into business, growth and expansion; and

WHEREAS members of minority groups traditionally have aspired to own their own businesses and thereby to participate in our free enterprise system; and

WHEREAS members of certain minority groups through no fault of their own have been denied the full opportunity to achieve these aspirations; and

WHEREAS the policy of the Executive Branch of the United States Government continues to be, as was described by President Dwight D. Eisenhower, "to strive to eliminate obstacles to the growth of small business"; and

WHEREAS the Small Business Act (72 Stat. 384, 15 U.S.C. 631) declares the Congressional policy that the United States Government should aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns; and

WHEREAS the Small Business Administration is the agency within the Executive Branch of the United States Government especially responsible for and with an established program of advocacy in matters relating to small business; and

WHEREAS section 8(b)(12) of the Small Business Act (72 Stat. 391, 15 U.S.C. 637(b)(12)) empowers the Small Business Administration to consult and cooperate with all Government agencies for the purpose of insuring that small business concerns receive fair and reasonable treatment from such agencies, and section 10(f) of that Act (72 Stat. 393, 15 U.S.C. 639(f)) requires each department and agency of the Federal Government, when requested by the Administrator of the Small Business Administration, to consult and cooperate with the Administration in the formulation by such department or agency of policies affecting small business concerns, in order to insure that small business interests will be recognized, protected, and preserved:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the Small Business Act, it is ordered as follows:

SECTION 1. The Small Business Administration, as the spokesman for and advocate of the small business community, shall advise and counsel small business concerns in their dealings with the departments and agencies of the United States Government to the end that the views of small business concerns will be fully heard, their rights fully protected, and their valid interests fully advanced.

SEC. 2. Departments and agencies of the Executive Branch of the United States Government shall call upon the Small Business Administration for advice, guidance, and assistance when considering matters which reasonably can be construed as materially affecting the well being or competitive strength of small business concerns or their opportunities for free entry into business, growth, or expansion. In taking action on such matters, these departments and agencies shall act in a manner calculated to advance the valid interests of small business concerns.

SEC. 3. The Small Business Administration, whenever it determines that the valid interests of small business concerns so warrant, shall take such action as may be appropriate to insure the timely presentation to departments and agencies of the United States Government of matters materially affecting the well being or competitive strength of small business concerns or their opportunities for free entry into business, growth, or expansion. To this end, the Small Business Administration may participate in investigations, hearings, or other proceedings pending before such departments or agencies and submit evidence, briefs, and arguments in accordance with, and to the extent permitted by, the department's or agency's rules of practice and procedure.

Sec. 4. In performing the responsibilities and duties placed on it by this order, the Small Business Administration shall particularly consider the needs and interests of minority-owned small business concerns and of members of minority groups seeking entry into the business community.

Sec. 5. Nothing in this order shall be construed to authorize the Small Business Administration to act as an attorney for an individual concern in any investigation, hearing, or other proceeding pending before any department or agency of the United States Government. Nothing in this order shall be construed to subject any department or agency to the authority of any other department or agency, to affect the present authority of any department or agency to participate in the proceedings of another department or agency, or to affect the authority of the Attorney General under 28 U.S.C. 519.

Sec. 6. The term "small business concern" as used in this order shall have the same meaning as in the Small Business Act.

Richard Nixon.

Section Referred to in Other Sections

This section is referred to in sections 636, 637, 687 of this title.

§ 639a. Review of loan program; submission of estimated needs for additional authorization

It is the sense of the Congress that the regular business loan program of the Small Business Administration should be reviewed by the Congress at least once every two years. It is further the sense of the Congress that the Small Business Administration should submit its estimated needs for additional authorization for such program to the Congress at least one year in advance of the date on which such authorization is to be provided, in order to assure an orderly and recurring review of such program and to avoid emergency appeals for additional authorization. Compliance by the Small Business Administration with the foregoing policy will enable the Congress on and after July 25, 1962, to provide additional authorization for such program on a two-year basis.

(Pub. L. 87-550, § 1(b), July 25, 1962, 76 Stat. 221.)

Codification

Section was not enacted as part of the Small Business Act which comprises this chapter.

§ 640. Voluntary agreements among small-business concerns

(a) Consultation with President

The President is authorized to consult with representatives of small-business concerns with a view to encouraging the making by such persons with the approval of the President of voluntary agreements and programs to further the objectives of this chapter.

(b) Exemption from certain laws; findings and requests; filing and publication

No act or omission to act pursuant to this chapter which occurs while this chapter is in effect, if requested by the President pursuant to a voluntary agreement or program approved under subsection (a) of this section and found by the President to be in the public interest as contributing to the national defense, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act [15 U.S.C. 41 et seq.] of the United States. A copy of each such request intended to be within the coverage of this section, and any modification or withdrawal thereof, shall be furnished to the Attorney General and the Chairman of the Federal Trade Commission when made, and it shall be published in the Federal Register unless publication thereof would, in the opinion of the President, endanger the national security.

(c) Delegation of authority; consultation; approval of requests

The authority granted in subsection (b) of this section shall be delegated only (1) to an official who shall for the purpose of such delegation be required to be appointed by the President by and with the advice and consent of the Senate, (2) upon the condition that such official consult with the Attorney General and the Chairman of the Federal Trade Commission not less than ten days before making any request or finding thereunder, and (3) upon the condition that such official obtain the approval of the Attorney General to any request thereunder before making the request.

(d) Inapplicability of section when request or finding withdrawn

Upon withdrawal of any request or finding hereunder, or upon withdrawal by the Attorney General of his approval of the voluntary agreement or program on which the request or finding is based, the provisions of this section shall not apply to any subsequent act, or omission to act, by reason of such finding or request.

(Pub. L. 85-536, § 2[11], July 18, 1958, 72 Stat. 394.)

References in Text

The "antitrust laws", referred to in subsec. (b), are classified generally to chapter 1 (§ 1 et seq.) of this title.

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

Codification

Prior similar provisions were contained in section 217 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, which was previously classified to section 646 of this title. The provisions of section 211 of act July 30, 1953, formerly classified to this section, were transferred to section 2[10] of Pub. L. 85-536, and are now classified to section 639(d), (f) of this title. See Codification note under section 631 of this title.

Ex. Ord. No. 10493. Delegation of Functions

Ex. Ord. No. 10493, Oct. 14, 1953, 18 F.R. 6583, provided:

SECTION 1. The functions conferred upon the President by section 217 of the Small Business Act of 1953 [now covered by this section] are hereby delegated to the Administrator of the Small Business Administration and shall be carried out as provided in the said section 217.

SEC. 2. There is hereby delegated to the Administrator of the Small Business Administration so much of the functions conferred upon the President by section 708 of the Defense Production Act of 1950, as amended [section 2158 of Title 50, Appendix, War and National Defense], as necessary to effect changes in the composition of, or to take other action respecting voluntary agreements and programs relating to, small-business production pools approved prior to July 31, 1953, pursuant to the said section 708 [section 2158 of Title 50, Appendix]: *Provided*, That this section shall not be construed as limiting the authority of the Director of the Office of Defense Mobilization under Executive Order No. 10480 of August 14, 1953 (18 F.R. 4939) [set out as a note under section 2153 of Title 50, Appendix]. The functions delegated to the Administrator by this section shall be carried out as provided in section 708 of the Defense Production Act of 1950, as amended [section 2158 of Title 50, Appendix].

SEC. 3. Without prejudice to any action taken thereunder, Executive Order No. 10370 of July 7, 1952 (17 F.R. 6141), is hereby revoked.

§ 641. Transfer to Administration of other functions, powers, and duties

The President may transfer to the Administration any functions, powers, and duties of any department or agency which relate primarily to small-business problems. In connection with any such transfer, the President may provide for appropriate transfers of records, property, necessary personnel, and unexpended balances of appropriations and other funds available to the department or agency from which the transfer is made.

(Pub. L. 85-536, § 2[12], July 18, 1958, 72 Stat. 394.)

CODIFICATION

Prior similar provisions were contained in section 218 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, as amended by act Aug. 9, 1955, ch. 628, § 12, 69 Stat. 551, which was previously classified to section 647 of this title. The provisions of section 212 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85-536, and are now classified to section 637(b) of this title. See Codification note under section 631 of this title.

EX. ORD. NO. 10504. TRANSFER OF FUNCTIONS TO SMALL BUSINESS ADMINISTRATOR

Ex. Ord. No. 10504, Dec. 1, 1953, 18 F.R. 7667, provided:

SECTION 1. There are hereby transferred and assigned to the Small Business Administrator all functions, powers, and duties of the Small Defense Plants Administration, its Administrator, and other officers, relating to the liquidation of the Small Defense Plants Administration, including, without limiting the generality of the foregoing, all remaining functions, powers, and duties with respect to (a) contracts entered into pursuant to subdivisions (B), (C), and (D) of section 714(b)(1) of the Defense Production Act of 1950, as amended; [former section 2163a(b)(1) (B), (C), (D) of Title 50, Appendix, War and National Defense] (b) certificates of competency issued pursuant to section 714(e)(6) and section 714(f)(1) of the said act; [former section 2163a(e)(6), (f)(1) of Title 50, Appendix] and (c) payment of obligations incurred against any appropriation or fund made available to the Small Defense Plants Administration.

SEC. 2. The said functions, powers, and duties shall be administered by the Small Business Administrator or, subject to his direction and control, by such officers and employees of the Small Business Administration as he shall designate.

SEC. 3. There shall be transferred to the Small Business Administration the records, property, and unexpended balances of appropriations and other funds of the Small Defense Plants Administration which relate to the functions, powers, and duties transferred and assigned by section 1 of this order.

SEC. 4. This order shall become effective at the close of business on November 30, 1953.

EX. ORD. NO. 11871. TRANSFER OF SCORE AND ACE PROGRAMS FROM ACTION AGENCY TO SMALL BUSINESS ADMINISTRATION

Ex. Ord. No. 11871, July 18, 1975, 40 F.R. 30915, provided:

By virtue of the authority vested in me by Section 12 of the Small Business Act (72 Stat. 394, 15 U.S.C. 641) [this section], the Domestic Volunteer Service Act of 1973 (87 Stat. 394, 42 U.S.C. 4951 *et seq.*), Section 301 of Title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. All functions, powers, and duties vested in the ACTION Agency or its Director under Title III of the Domestic Volunteer Service Act of 1973 (87 Stat. 404, 42 U.S.C. 5031, *et seq.*), which relate to a Service Corps of Retired Executives ("SCORE") and an Active Corps of Executives ("ACE") are hereby transferred to the Small Business Administration.

SEC. 2. All the functions, powers, and duties vested in the ACTION Agency or its Director under Title IV of the Domestic Volunteer Service Act of 1973 (87 Stat. 405, 42 U.S.C. 5041, *et seq.*), which are incidental to or necessary for the performance of the functions, powers, and duties transferred by Section 1 of this Order, are hereby transferred to the Small Business Administration.

SEC. 3. Nothing in this Order shall preclude the ACTION Agency or its Director from continuing, establishing, or conducting volunteer programs to carry out his other responsibilities as provided for in Title III or Title IV of the Domestic Volunteer Service Act of 1973 [sections 5031 et seq. and 5041 et seq. of Title 42, The Public Health and Welfare].

SEC. 4. The authority of the President under Section 12 of the Small Business Act (15 U.S.C. 641) [this section] to provide for appropriate transfers of records, property, necessary personnel, and unexpended balances of appropriations and other funds in connection with the transfers provided by this Order is hereby delegated to the Director of the Office of Management and Budget, who shall take such action as he deems appropriate to enable the proper performance of the functions, powers, and duties transferred by this Order.

SEC. 5. The rights, privileges, and disabilities attaching to volunteers under Title III and Title IV of the Domestic Volunteer Service Act of 1973 [sections 5031 et seq. and 5041 et seq. of Title 42, The Public Health and Welfare], and to Federal employees otherwise entitled to Civil Service protection and transferred hereunder, shall not be otherwise affected by this transfer.

SEC. 6. This Order shall be effective on the fifteenth day of July, 1975.

GERALD R. FORD.

§ 642. Requirements for loans

No loan shall be made or equipment, facilities, or services furnished by the Administration under this chapter to any business enterprise unless the owners, partners, or officers of such business enterprise (1) certify to the Administration the names of any attorneys, agents, or other persons engaged by or on behalf of such business enterprise for the purpose of expediting applications made to the Administration for assistance of any sort, and the fees paid or to be paid to any such persons; (2) execute an agreement binding any such business enterprise for a period of two years after any assistance is rendered by the Administration to such business enterprise, to refrain from employing, tendering any office or employment to, or retaining for professional services, any person who, on the date such assistance or any part thereof was rendered, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee of the Administration occupying a position or engaging in activities which the Administration shall have determined involve discretion with respect to the granting of assistance under this chapter; and (3) furnish the names of lending institutions to which such business enterprise has applied for loans together with dates, amounts, terms, and proof of refusal.

(Pub. L. 85-536, § 2[13], July 18, 1958, 72 Stat. 394.)

CODIFICATION

Prior similar provisions were contained in section 219 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, which was previously classified to section 648 of this title. The provisions of section 213 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85-536, and are now classified to section 637(b)(6), (7) of this title. See Codification note under section 631 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 687 of this title.

§ 643. Fair charge for use of Government-owned property

To the fullest extent the Administration deems practicable, it shall make a fair charge for the use of Government-owned property and make and let contracts on a basis that will result in a recovery of the direct costs incurred by the Administration.

(Pub. L. 85-536, § 2[14], July 18, 1958, 72 Stat. 395.)

CODIFICATION

Prior similar provisions were contained in section 220 of act July 30, 1953, ch. 282, title II, 67 Stat. 240, which was previously classified to section 649 of this title. The provisions of section 214 of act July 30, 1953, formerly classified to this section, were transferred to section 2[15] of Pub. L. 85-536, and are now classified to section 644 of this title. See Codification note under section 631 of this title.

§ 644. Determination of awards or contracts

To effectuate the purposes of this chapter, small-business concerns within the meaning of this chapter shall receive any award or contract or any part thereof, and be awarded any contract for the sale of Government property, as to which it is determined by the Administration and the contracting procurement or disposal agency (1) to be in the interest of maintaining or mobilizing the Nation's full productive capacity, (2) to be in the interest of war or national defense programs, (3) to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government are placed with small-business concerns, or (4) to be in the interest of assuring that a fair proportion of the total sales of Government property be made to small-business concerns; but nothing contained in this chapter shall be construed to change any preferences or priorities established by law with respect to the sale of electrical power or other property by the Government or any agency thereof. These determinations may be made for individual awards or contracts or for classes of awards or contracts. Whenever the Administration and the contracting procurement agency fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator.

(Pub. L. 85-536, § 2[15], July 18, 1958, 72 Stat. 395.)

CODIFICATION

Prior similar provisions were contained in section 214 of act July 30, 1953, ch. 282, title II, 67 Stat. 238, as amended by act Aug. 9, 1955, ch. 628, § 9, 69 Stat. 551, which was previously classified to section 643 of this title. The provisions of section 215 of act July 30, 1953, formerly classified to this section, were transferred to section 2[10] of Pub. L. 85-536, and are now classified to section 639 of this title. See Codification note under section 631 of this title.

§ 645. Offenses and penalties

(a) False statements; overvaluation of securities

Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the Administration, or for the purpose of obtaining money, property, or anything of value, under this chapter, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both.

(b) Embezzlement, etc.

Whoever, being connected in any capacity with the Administration, (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise entrusted to it, or (2) with intent to defraud the Administration or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Administration, makes any false entry in any book, report, or statement of or to the Administration, or, without being duly authorized, draws any order or issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, bill of exchange, mortgage, judgment, or decree thereof, or (3) with intent to defraud participates or shares in or receives directly or indirectly any money, profit, property, or benefit through any transaction, loan, commission, contract, or any other act of the Administration, or (4) gives any unauthorized information concerning any future action or plan of the Administration which might affect the value of securities, or, having such knowledge, invests or speculates, directly or indirectly, in the securities or property of any company or corporation receiving loans or other assistance from the Administration, shall be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both.

(c) Concealment, etc.

Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his own use or to that of another, any property mortgaged or pledged to, or held by, the Administration, shall be fined not more than $5,000 or imprisoned not more than five years, or both; but if the value of such property does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(Pub. L. 85-536, § 2[16], July 18, 1958, 72 Stat. 395; Pub. L. 88-264, § 2, Feb. 5, 1964, 78 Stat. 8.)

CODIFICATION

Prior similar provisions were contained in section 209 of act July 30, 1953, ch. 282, title II, 67 Stat. 237, which was previously classified to section 638 of this title. The provisions of section 216 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85-536, and are now classified to section 637(c) of this title. See Codification note under section 631 of this title.

AMENDMENTS

1964—Subsec. (c). Pub. L. 88-264 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 687 of this title.

§ 646. Liens

Any interest held by the Administration in property, as security for a loan, shall be subordinate to any lien on such property for taxes due on the property to a State, or political subdivision thereof, in any case where such lien would, under applicable State law, be superior to such interest if such interest were held by any party other than the United States.

(Pub. L. 85-536, § 2[17], July 18, 1958, 72 Stat. 396.)

CODIFICATION

Section 217 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, which was previously classified to this section, is now covered by section 640 of this title. See Codification note under section 631 of this title.

§ 647. Duplication of activities of other Federal departments or agencies

The Administration shall not duplicate the work or activity of any other department or agency of the Federal Government, except to those enterprises engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries, and nothing contained in this chapter shall be construed to authorize any such duplication unless such work or activity is expressly provided for in this chapter. If loan applications are being refused or loans denied by such other department or agency responsible for such work or activity due to administrative withholding from obligation or withholding from apportionment, or due to administratively declared moratorium, then, for purposes of this section, no duplication shall be deemed to have occurred.

(Pub. L. 85-536, § 2[18], July 18, 1958, 72 Stat. 396; Pub. L. 93-386, § 5, Aug. 23, 1974, 88 Stat. 746; Pub. L. 94-305, title I, § 112(e), June 4, 1976, 90 Stat. 667.)

CODIFICATION

Prior similar provisions were contained in section 225, of act July 30, 1953, ch. 282, as added by act Aug. 9, 1955, ch. 628, § 14, 69 Stat. 551, which was previously classified to section 651 of this title. The provisions of section 218 of act July 30, 1953, formerly classified to this section, were transferred to section 2[12] of Pub. L. 85-536, and are now classified to section 641 of this title. See Codification note under section 631 of this title.

AMENDMENTS

1976—Pub. L. 94-305 inserted reference to those enterprises engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries.

1974—Pub. L. 93-386 added provision authorizing the refusal of loan applications and the denial of loans, for purposes of this section, to be deemed nonduplication of activities.

§§ 648 to 651. Omitted

CODIFICATION

Section 648, act July 30, 1953, ch. 282, title II, § 219, 67 Stat. 239, related to requirements for loans and was omitted as superseded by section 642 of this title. See Codification note under section 631 of this title.

Section 649, act July 30, 1953, ch. 282, title II, § 220, 67 Stat. 240, required a fair charge for use of Government-owned property, and was omitted as superseded by section 643 of this title. See Codification note under section 631 of this title.

Section 650, acts July 30, 1953, ch. 282, title II, § 221, 67 Stat. 240; June 30, 1955, ch. 251, § 4, 69 Stat. 225; Aug. 9, 1955, ch. 628, § 13, 69 Stat. 551; Pub. L. 85-120, § 2, Aug. 3, 1957, 71 Stat. 341, provided for a termination date of the Small Business Act of 1953, and was omitted from the general revision by Pub. L. 85-536. See Codification note under section 631 of this title.

Section 651, act July 30, 1953, ch. 282, § 225, as added Aug. 9, 1955, ch. 628, § 14, 69 Stat. 551, prohibited duplication of activities, and was omitted as superseded by section 647 of this title. See Codification note under section 631 of this title.

CHAPTER 14B—SMALL BUSINESS INVESTMENT PROGRAM

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 77c, 77ddd, 80a-18, 633, 637, 1691c of this title; title 26 sections 243, 542, 586, 1242, 1243.

SUBCHAPTER I—GENERAL PROVISIONS

§ 661. Congressional declaration of policy

It is declared to be the policy of the Congress and the purpose of this chapter to improve and stimulate the national economy in general and the small-business segment thereof in particular by establishing a program to stimulate and supplement the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply: *Provided, however,* That this policy shall be carried out in such manner as to insure the maximum participation of private financing sources.

It is the intention of the Congress that the provisions of this chapter shall be so administered that any financial assistance provided hereunder shall not result in a substantial increase of unemployment in any area of the country.

(Pub. L. 85-699, title I, § 102, Aug. 21, 1958, 72 Stat. 689.)

REFERENCES IN TEXT

This chapter, referred to in the text, was, in the original, a reference to "this Act", meaning Pub. L. 85-699, which added this chapter, amended sections 77c, 77ddd, 80a-18, 633 and 636 of this title, and sections 217 [now 212], 218 [now 213], 221 [now 216], 657, 1006 and 1014 of Title 18, Crimes and Criminal Procedure, repealed section 352a of Title 12, Banks and Banking, and enacted notes set out under this section and section 352a of title 12.

SHORT TITLE OF 1972 AMENDMENT

Section 1 of Pub. L. 92-595, Oct. 27, 1972, 86 Stat. 1314, provided: "That this Act [enacting sections 687i and 687j of this title and amending sections 80a-18, 633, 636, 662, 681, 683, 684, and 686 of this title] may be cited as the 'Small Business Investment Act Amendments of 1972'."

SHORT TITLE OF 1967 AMENDMENT

Section 201 of Pub. L. 90-104, title II, Oct. 11, 1967, 81 Stat. 269, provided that: "This title [which amended sections 681, 682, 683, 684, 686, 687, 687b, and 692 of this title] may be cited as the 'Small Business Investment Act Amendments of 1967'."

SHORT TITLE OF 1966 AMENDMENT

Section 1 of Pub. L. 89-779, Nov. 6, 1966, 80 Stat. 1359, provided: "That this Act [adding sections 687e, 687f, 687g, and 687h of this title and amending sections 633, 671, 687, 687a, 687b, and 687c of this title, and sections 5315 and 5316 of Title 5, Government Organization and Employees] may be cited as the 'Small Business Investment Act Amendments of 1966'."

SHORT TITLE OF 1964 AMENDMENT

Section 1 of Pub. L. 88-273, Feb. 28, 1964, 78 Stat. 146, provided: "That this Act [adding section 687d and amending sections 682, 686, and 687 of this title] may be cited as the 'Small Business Investment Act Amendments of 1963'."

SHORT TITLE OF 1961 AMENDMENT

Section 1 of Pub. L. 87-341, Oct. 3, 1961, 75 Stat. 752, provided that Pub. L. 87-341 which added sections 687a, 687b, and 687c of this title, amended sections 633, 662, 681, 683 to 687, and 696 of this title, and enacted provisions set out as notes under sections 631 and 686 of this title, may be cited as the "Small Business Investment Act Amendments of 1961."

SHORT TITLE OF 1960 AMENDMENT

Section 1 of Pub. L. 86-502, June 11, 1960, 74 Stat. 196, provided that Pub. L. 86-502, which amended sections 662, 681, 682, and 684 of this title, and section 26-610 of the District of Columbia Code, 1973 edition, may be cited as the "Small Business Investment Act Amendments of 1960."

SHORT TITLE

Section 101 of Pub. L. 85-699 provided that Pub. L. 85-699, which added this chapter, amended sections 77c, 77ddd, 80a-18, 633 and 636 of this title, and sections 217 [now 212], 218 [now 213], 221 [now 216], 657, 1006 and 1014 of Title 18, Crimes and Criminal Procedure, repealed section 352a of Title 12, Banks and Banking, and enacted notes set out under this section and former section 352a of title 12, should be known as the "Small Business Investment Act of 1958."

§ 662. Definitions

As used in this chapter—

(1) the term "Administration" means the Small Business Administration;

(2) the term "Administrator" means the Administrator of the Small Business Administration;

(3) the terms "small business investment company", "company", and "licensee" mean a company approved by the Administration to operate under the provisions of this chapter and issued a license as provided in section 681 of this title;

(4) the term "State" includes the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, and the District of Columbia;

(5) the term "small-business concern" shall have the same meaning as in the Small Business Act [15 U.S.C. 631 et seq.];

(6) the term "development companies" means enterprises incorporated under State law with the authority to promote and assist the growth and development of small-business concerns in the areas covered by their operations;

(7) the term "license" means a license issued by the Administration as provided in section 681 of this title; and

(8) the term "articles" means articles of incorporation for an incorporated body and

means the functional equivalent or other similar documents specified by the Administrator for other business entities.

(Pub. L. 85-699, title I, § 103, Aug. 21, 1958, 72 Stat. 690; Pub. L. 86-502, § 3, June 11, 1960, 74 Stat. 196; Pub. L. 87-341, § 2, Oct. 3, 1961, 75 Stat. 752; Pub. L. 92-595, § 2(a), Oct. 27, 1972, 86 Stat. 1314; Pub. L. 94-305, title I, § 106(a), June 4, 1976, 90 Stat. 666.)

References in Text

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 85-699, which is generally classified to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title.

The Small Business Act, referred to in par. (5), is Pub. L. 85-536, July 18, 1958, 72 Stat. 384, which is classified to chapter 14A (§ 631 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 631 of this title and Tables volume. The term "small-business concern" is defined in section 632 of this title.

Amendments

1976—Par. (8). Pub. L. 94-305 added par. (8).

1972—Par. (3). Pub. L. 92-595 substituted "section 681" for "section 681(c)".

Par. (7). Pub. L. 92-595 substituted "section 681" for "section 681(c)".

1961—Par. (3). Pub. L. 87-341, § 2(1), inserted "licensee" and substituted "company approved by the Administration to operate under the provisions of this chapter and issued a license as provided in section 681(c) of this title" for "small business investment company organized as provided in subchapter III of this chapter, including (except for purposes of sections 681 and 687(f) of this title) a State-chartered investment company which has obtained the approval of the Administrator to operate under the provisions of this chapter as provided in section 688 of this title and a company converted into a small business investment company under section 691 of this title".

Par. (7). Pub. L. 87-341, § 2(2), added par. (7).

1960—Pub. L. 86-502 substituted the definition of "State" for the definition of "United States" in par. (4).

SUBCHAPTER II—SMALL BUSINESS INVESTMENT DIVISION OF SMALL BUSINESS ADMINISTRATION

§ 671. Establishment; Associate Administrator; appointment and compensation

There is hereby established in the Small Business Administration a division to be known as the Small Business Investment Division. The Division shall be headed by an Associate Administrator who shall be appointed by the Administrator, and shall receive compensation at the rate provided by law for other Associate Administrators of the Small Business Administration.

(Pub. L. 85-699, title II, § 201, Aug. 21, 1958, 72 Stat. 690; Pub. L. 89-117, title III, § 316(b), Aug. 10, 1965, 79 Stat. 484; Pub. L. 89-779, § 2, Nov. 6, 1966, 80 Stat. 1359.)

Amendments

1966—Pub. L. 89-779 substituted "Associated Administrator" for "Deputy Administrator" as the head of the Small Business Investment Division of the Small Business Administration, substituted the rate provided by law for other Associate Administrators of the Small Business Administration for the rate provided by law for the other Deputy Administrators of the Small Business Administration as the standard of compensation for the head of the Small Business Investment Division, and struck out provisions spelling out the proper exercise of the powers conferred on the Administration and on the Administrator through the Small Business Investment Division and the Division head. See section 687(f) of this title.

1965—Pub. L. 89-117 provided that the powers conferred by subchapters IV-A and V of this chapter shall be exercised through such divisions, sections, or other personnel as the Administrator in his discretion determines.

Section Referred to in Other Sections

This section is referred to in sections 633, 693 of this title.

§ 672. Repealed. Pub. L. 87-341, § 11(h)(1), Oct. 3, 1961, 75 Stat. 757

Section, Pub. L. 85-699, title II, § 202(b), Aug. 21, 1958, 72 Stat. 691, authorized appropriations for business expenses.

SUBCHAPTER III—SMALL BUSINESS INVESTMENT COMPANIES

Subchapter Referred to in Other Sections

This subchapter is referred to in section 633 of this title.

§ 681. Organization

(a) Incorporation and charter under State law, period of succession; area of operations

A small business investment company shall be an incorporated body or a limited partnership organized and chartered or otherwise existing under State law solely for the purpose of performing the functions and conducting the activities contemplated under this subchapter, which has succession for a period of not less than thirty years unless sooner dissolved by its shareholders or partners and possesses the powers reasonably necessary to perform such functions and conduct such activities. The area in which the company is to conduct its operations, and the establishment of branch offices or agencies (if authorized by the articles), shall be subject to the approval of the Administration.

(b) Articles of incorporation; approval

The articles of any small business investment company shall specify in general terms the objects for which the company is formed, the name assumed by such company, the area or areas in which its operations are to be carried on, the place where its principal office is to be located, and the amount and classes of its shares of capital stock. Such articles may contain any other provisions not inconsistent with this chapter that the company may see fit to adopt for the regulation of its business and the conduct of its affairs. Such articles and any amendments thereto adopted from time to time shall be subject to the approval of the Administration.

(c) Forwarding of articles for approval or disapproval; matters considered; issuance of license

The articles and amendments thereto shall be forwarded to the Administration for consideration and approval or disapproval. In determining whether to approve such a company's articles and permit it to operate under the provisions of this chapter, the Administration shall give due regard, among other things, to the need and availability for the financing of small business concerns in the geographic area in which the proposed company is to commence business, the general business reputation and character of the proposed owners and management of the company, and the probability of successful operations of such company including adequate profitability and financial soundness. After consideration of all relevant factors, if it approves the company's articles, the Administration may in its discretion approve the company to operate under the provisions of this chapter and issue the company a license for such operation.

(d) Companies financing disadvantaged persons

Notwithstanding any other provision of this chapter, a small business investment company, the investment policy of which is that its investments will be made solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages may be organized and chartered under State business or nonprofit corporation statutes, and may be licensed by the Administration to operate under the provisions of this chapter.

(Pub. L. 85-699, title III, § 301, Aug. 21, 1958, 72 Stat. 691; Pub. L. 86-502, § 4, June 11, 1960, 74 Stat. 196; Pub. L. 87-341, § 11(a), (b), Oct. 3, 1961, 75 Stat. 756; Pub. L. 90-104, title II, § 202, Oct. 11, 1967, 81 Stat. 269; Pub. L. 92-595, § 2(b), Oct. 27, 1972, 86 Stat. 1314; Pub. L. 94-305, title I, § 106(b)-(d), June 4, 1976, 90 Stat. 666.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) to (d), in the original read "this Act", meaning Pub. L. 85-699, which is generally classified to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-305, § 106(b), inserted reference to limited partnership and reference to partners, struck out "of incorporation" after "by the articles", and inserted "or otherwise existing" after "chartered".

Subsec. (b). Pub. L. 94-305, § 106(c), struck out "of incorporation" after "The articles".

Subsec. (c). Pub. L. 94-305, § 106(d), struck out "of incorporation" after "articles" wherever appearing therein.

1972—Subsec. (d). Pub. L. 92-595 added subsec. (d).

1967—Subsec. (c). Pub. L. 90-104 provided for consideration of availability of financing, the geographic area, the business reputation, ownership factor, and probability of successful operations of company including adequate profitability and financial soundness and eliminated from consideration the number of such companies previously organized in the United States and the volume of their operations.

1961—Subsec. (a). Pub. L. 87-341, § 11(a), provided that small business investment companies shall be incorporated, organized and chartered under State law, with a minimum succession period of thirty years unless sooner dissolved by its activities and functions, its area of operation shall be subject to the Administration's approval, and deleted provisions setting the minimum number of incorporators at 10, no company shall be chartered by the Administration unless it determined that none could be chartered under the laws of the State and operate in accordance with this chapter, and that no such company shall be chartered by the Administration under this section after June 30, 1961.

Subsec. (c). Pub. L. 87-341, § 11(b)(1), (2), substituted "such a company's articles of incorporation and permit it to operate under the provisions of this chapter" for "the establishment of such a company and its proposed articles of incorporation", and provided that if the Administration approves the company to operate under the provisions of this chapter, it may issue the company a license for such operation.

Subsec. (d). Pub. L. 87-341, § 11(b)(3), repealed subsec. (d) which specified the general powers of a company formed under this section.

Subsec. (e). Pub. L. 87-341, § 11(b)(3), repealed subsec. (e) which provided for a board of directors for a company formed under this section.

1960—Subsec. (d). Pub. L. 86-502 eliminated former par. (9), which empowered companies to act as depositories or fiscal agents of the United States, and redesignated pars. (10) and (11) as (9) and (10).

EFFECTIVE DATE OF 1967 AMENDMENT

Section 211 of Pub. L. 90-104 provided that: "The effective date of this title [which amended this section and sections 682, 683, 684, 686, 687, 687b, and 692 of this title] shall be ninety days after enactment [Oct. 11, 1967], except that, with respect to section 207 [which amended section 686 of this title], it shall be January 1, 1968".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 662, 683, 687j of this title.

§ 682. Capital requirements

(a) Amount of paid-in capital and paid-in surplus; sound and profitable operations and active and prudent management

Each company authorized to operate under this chapter shall have a combined private paid-in capital and paid-in surplus in an amount (1) not less than $150,000, and (2) adequate to assure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently in accordance with its articles.

(b) Sale of shares of stock to banking organizations

Notwithstanding the provisions of section 1845(a)(1) of title 12, shares of stock in small business investment companies shall be eligible for purchase by national banks, and shall be eligible for purchase by other member banks of the Federal Reserve System and nonmember insured banks to the extent permitted under applicable State law; except that in no event may any such bank acquire shares in any small business investment company if, upon the making of that acquisition, the aggregate amount of shares in small business investment companies then held by the bank would exceed 5 percent of its capital surplus.[1]

(c) Ownership or control of stock; limitation on aggregate amount

The aggregate amount of shares in any such company or companies which may be owned or controlled by any stockholder, or by any group or class of stockholders, may be limited by the Administration.

(Pub. L. 85-699, title III, § 302, Aug. 21, 1958, 72 Stat. 692; Pub. L. 86-502, § 5, June 11, 1960, 74

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[1] So in original, probably should be "capital and surplus".

Stat. 196; Pub. L. 87-341, § 3, Oct. 3, 1961, 75 Stat. 752; Pub. L. 88-273, § 2, Feb. 28, 1964, 78 Stat. 146; Pub. L. 90-104, title II, §§ 203(a), 204, Oct. 11, 1967, 81 Stat. 269, 270; Pub. L. 94-305, title I, §§ 106(a), 107, June 4, 1976, 90 Stat. 666.)

References in Text

This chapter, referred to in subsec. (a), in the original read "this Act", meaning Pub. L. 85-699, which is generally classified to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title.

Section 1845(a)(1) of title 12, referred to in subsec. (b), was repealed by Pub. L. 89-485, § 9, July 1, 1966, 80 Stat. 240. See, now, section 371c of Title 12, Banks and Banking.

Amendments

1976—Subsec. (a). Pub. L. 94-305, § 106(e), struck out "of incorporation" after "its articles".

Subsec. (b). Pub. L. 94-305, § 107, eliminated provisions prohibiting the bank from acquiring shares in a small business investment company if the bank would hold 50 percent or more of any class of equity securities issued by that investment company and having actual or potential voting rights.

1967—Subsec. (a). Pub. L. 90-104, § 203(a), substituted small business investment company minimum capital requirement, a combined private paid-in capital and paid-in surplus, of $150,000 and adequate to assure reasonable prospect of sound and profitable company operations and active and prudent management in accordance with the articles of incorporation for former requirement of a paid-in capital and surplus equal to at least $300,000, and eliminated provisions for purchase of debentures of such companies in an amount not to exceed the lesser of $700,000 or the amount of paid-in capital and surplus of the company from other sources and for subordination of debentures (both incorporated in section 686(b) of this title), for such purchases by the Administration only during certain prescribed period, and deeming the debentures part of the capital and surplus for certain purposes.

Subsec. (b). Pub. L. 90-104, § 204, substituted prohibition against bank acquisition of small business investment company stock if, upon such acquisition, the aggregate amount of shares in such companies then held by the bank would exceed 5 percent of the capital and surplus, or the bank would hold 50 percent or more of any class of equity securities issued by that investment company and having actual or potential voting rights for former prohibition against holding of shares in an amount aggregating more than 2 percent of its capital and surplus.

1964—Subsec. (a). Pub. L. 88-273 increased the limitation on Administration purchase of debentures from $400,000 to $700,000 and extended the period for such purchase from three years after date of issuance of license or date of enactment of Pub. L. 87-341, the Small Business Investment Act Amendments of 1961 (Oct. 3, 1961), whichever is later, to five years after date of issuance of license or date of enactment of Pub. L. 88-273, the Small Business Investment Act Amendments of 1963 (Feb. 28, 1964), whichever is later.

1961—Subsec. (a). Pub. L. 87-341, § 3(a), inserted "and growth", limited the purchase of debentures to the extent that necessary funds are not available to the company involved from private sources on reasonable terms, increased the amount of purchaseable debentures to not more than the lesser of $400,000 or the paid-in capital and surplus of the company from other sources, and restricted such purchases to such period as may be fixed by the Administration, but not ending more than three years after the date of issuance of the company's license under section 681c of this title, or Oct. 3, 1961, whichever is later, and deleted provisions limiting purchase of debentures to $150,000.

Subsec. (b). Pub. L. 87-341, § 3(b), increased the maximum amount of shares a bank may hold in small business investment companies to 2 percent of the capital and surplus.

1960—Subsec. (b). Pub. L. 86-502 substituted "Notwithstanding the provisions of section 1845(a)(1) of title 12, shares" for "Shares".

Effective Date of 1967 Amendment

Amendment by Pub. L. 90-104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90-104, set out as a note under section 681 of this title.

Section Referred to in Other Sections

This section is referred to in title 42 section 2985a.

§ 683. Borrowing operations

(a) Authority to issue obligations

Each small business investment company shall have authority to borrow money and to issue its debenture bonds, promissory notes, or other obligations under such general conditions and subject to such limitations and regulations as the Administration may prescribe.

(b) Debentures

To encourage the formation and growth of small business investment companies the Administration is authorized (but only to the extent that the necessary funds are not available to said company from private sources on reasonable terms) when authorized in appropriation Acts, to purchase, or to guarantee the timely payment of all principal and interest as scheduled on, debentures issued by such companies. Such purchases or guarantees may be made by the Administration on such terms and conditions as it deems appropriate, pursuant to regulations issued by the Administration. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection. Debentures purchased or guaranteed by the Administration under this subsection shall be subordinate to any other debenture bonds, promissory notes, or other debts and obligations of such companies, unless the Administration in its exercise of reasonable investment prudence and in considering the financial soundness of such company determines otherwise. Such debentures may be issued for a term of not to exceed fifteen years and shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities on such debentures, adjusted to the nearest one-eighth of 1 per centum, plus such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes. The debentures shall also contain such other terms as the Administration may fix, and shall be subject to the following restrictions and limitations:

(1) The total amount of debentures purchased or guaranteed and outstanding at any one time from a company which does not qualify under the terms of paragraph (2) of this subsection, shall not exceed 300 percent of the combined private paid-in capital and paid-in surplus of such company. In no event

shall the debentures of any such company purchased or guaranteed and outstanding under this paragraph exceed $35,000,000.

(2) The total amount of debentures which may be purchased or guaranteed and outstanding at any one time from a company not complying with section 681(d) of this title, which has investments or legal commitments of 65 per centum or more of its total funds available for investment in small business concerns invested or committed in venture capital, and which has combined private paid-in capital and paid-in surplus of $500,000 or more shall not exceed 400 per centum of its combined private paid-in capital and paid-in surplus. In no event shall the debentures of any such company purchased or guaranteed and outstanding under this paragraph exceed $35,000,000. Such additional purchases or guarantees which the Administration makes under this paragraph shall contain conditions to insure appropriate maintenance by the company receiving such assistance of the described ratio during the period in which debentures under this paragraph are outstanding.

(3) Outstanding amounts of financial assistance provided to a company by the Administration prior to the effective date of the Small Business Investment Act Amendments of 1967 shall be deducted from the maximum amount of debentures which the Administration would otherwise be authorized to purchase or guarantee under this subsection.

For purposes of this subsection, the term "venture capital" includes such common stock, preferred stock, or other financing with subordination or nonamortization characteristics as the Administration determines to be substantially similar to equity financing.

(c) Purchase and guarantee operations of Administration

Subject to the following conditions, the Administration is authorized to purchase preferred securities, and to purchase, or to guarantee the timely payment of all principal and interest payments as scheduled, on debentures issued by small business investment companies operating under authority of section 681(d) of this title. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection.

The Administration may purchase—

(1) shares of nonvoting stock (or other securities having similar characteristics), provided—

(i) dividends are preferred and cumulative to the extent of 3 per centum of par value per annum;

(ii) on liquidation or redemption, the Administration is entitled to the preferred payment of the par value of such securities; and prior to any distribution (other than to the Administration) the Administration may require the preferred payment of the difference between dividends paid thereon and cumulative dividends payable at a rate equal to the interest rate determined pursuant to subsection (b) of this section for debentures with a term of fifteen years, without interest on such difference;

(iii) the purchase price shall be at par value and, in any one sale, $50,000 or more; and

(iv) the amount of such securities purchased and outstanding at any one time shall not exceed (A) from a company having combined private paid-in capital and paid-in surplus of less than $300,000 and licensed on or before October 13, 1971, the amount of combined private paid-in capital and paid-in surplus invested after such date, nor (B) from any company having combined private paid-in capital and paid-in surplus of $300,000 or more but less than $500,000, the amount of its combined private paid-in capital and paid-in surplus in excess of $300,000, nor (C) from any company having combined private paid-in capital and paid-in surplus of $500,000 or more, the amount of its combined private paid-in capital and paid-in surplus.

The Administration may purchase or guarantee—

(2) debentures subordinated pursuant to subsection (b) of this section (other than securities purchased under paragraph (1) of this subsection (c)), provided—

(i) such debebtures are issued for a term of not to exceed fifteen years;

(ii) the interest rate is determined pursuant to subsection (b) of this section and section 687i of this title; and

(iii) the amount of debentures purchased or guaranteed and outstanding at any one time pursuant to this paragraph (2) from a company having combined private paid-in capital and paid-in surplus of less than $500,000 shall not exceed 300 per centum of its combined private paid-in capital and paid-in surplus less the amount of preferred securities outstanding under paragraph (1) of this subsection, nor from a company having combined private paid-in capital and paid-in surplus of $500,000 or more, 400 per centum of its combined private paid-in capital and paid-in surplus less the amount of such preferred securities.

(3) debentures purchased and outstanding pursuant to subsection (b) of this section may be retired simultaneously with the issuance of preferred securities to meet the requirements of subparagraph (2)(iii) of this subsection (c).

(4) the Administration may require, as a condition of the purchase or guarantee of any securities in excess of 300 per centum of the combined private paid-in capital and paid-in surplus of a company, that the company maintains a percentage of its total funds available for investment in small business concerns invested or legally committed in venture capital (as defined in subsection (b) of this section) determined by the Administration to be reasonable and appropriate.

(Pub. L. 85-699, title III, § 303, Aug. 21, 1958, 72 Stat. 692; Pub. L. 87-341, § 4, Oct. 3, 1961, 75 Stat. 752; Pub. L. 88-273, § 3, Feb. 28, 1964, 78 Stat. 146; Pub. L. 90-104, title II, § 205, Oct. 11, 1967, 81 Stat. 270; Pub. L. 92-213, § 10, Dec. 22, 1971, 85 Stat. 776; Pub. L. 92-595, § 2(c), (d), Oct. 27, 1972, 86 Stat. 1314; Pub. L. 94-305, title I, § 104, June 4, 1976, 90 Stat. 665.)

REFERENCES IN TEXT

For effective date of the Small Business Investment Act Amendments of 1967, referred to in subsec. (b)(3), see Effective Date of 1967 Amendment note, set out under section 681 of this title.

AMENDMENTS

1976—Subsec. (b)(1). Pub. L. 94-305, § 104(a), substituted "300" for "200" and "$35,000,000" for "$15,000,000".

Subsec. (b)(2). Pub. L. 94-305, § 104(b), substituted "400" for "300" and "$35,000,000" for "$20,000,000".

Subsec. (c)(2)(iii). Pub. L. 94-305, § 104(c), substituted "400" for "300" and "300" for "200".

Subsec. (c)(4). Pub. L. 94-305, § 104(c)(2), substituted "300" for "200".

1972—Subsec. (b)(1). Pub. L. 92-595, § 2(c)(1), (2), substituted "combined private paid-in capital" for "combined paid-in capital" and "$15,000,000" for "$7,500,000".

Subsec. (b)(2). Pub. L. 92-595, § 2(c)(3), substituted provisions relating to the purchase of debentures from companies not complying with section 681(d) of this title having investments or legal commitments of 65 per cent or more and whose combined private paid-in capital and paid-in surplus is $500,000 or more for provisions relating to such purchase from companies having investments or legal commitments of 65 per cent or more and whose combined paid-in capital and paid-in surplus is $1,000,000 or more, and increased the maximum amount of outstanding debentures from $10,000,000 to $20,000,000.

Subsec. (c). Pub. L. 92-595, § 2(d), added subsec. (c).

1971—Subsec. (b). Pub. L. 92-213 added provision for a guaranty authority for the Administration and inserted requirement that such guaranty authority of the Administration be exercised only when authorized in appropriation Acts, authorized the purchase or guaranty on such terms as the Administration deems appropriate pursuant to regulations issued by the Administration, pledged the full faith and credit of the United States to the payment of amounts required to be paid in full under such guaranty, and struck out provision authorizing Administration cooperation with banks or other lending institutions in the purchase of debentures.

1967—Subsec. (b). Pub. L. 90-104 substituted purchase of debenture provisions of former section 682(a) of this title for former provision for loans (eliminating participation on deferred (standby) basis), incorporated subordination provision of such former section 682(a) (inserting provision for Administration exercise of reasonable investment prudence and for consideration of financial soundness of the company), provided for maximum term of fifteen years, substituted rate of interest taking into consideration current average market yield on outstanding marketable Treasury obligations with remaining periods to maturity comparable to average maturities on such debentures, as adjusted plus charge toward cost of programs, for rate of interest not lower than average investment yield on marketable Treasury obligations outstanding at time of loan involved, and added pars. (1) to (3) and definition of venture capital, former par. (1) limiting Administration purchases of company obligations to 50 per centum of paid-in capital and surplus or $4,000,000, whichever is less, and par. (2) requiring loans to be of such sound value as reasonably to assure repayment.

1964—Subsec. (b). Pub. L. 88-273 provided for participation loans by Administration with lending institutions on an immediate or deferred basis and for a minimum interest rate measured by the average investment yield on marketable obligations of the United States outstanding at the time of the loan involved, and designated existing provisions as clauses (1) and (2).

1961—Subsec. (b). Pub. L. 87-341 limited the Administration's authorization to lend funds to the extent that the funds are not available to the company involved from private sources on reasonable terms, and the total amount of obligations, including commitments to purchase such obligations, which can be purchased in any one company to not more than 50 percent of the paid-in capital and surplus or $4,000,000, whichever is less, and inserted "All loans made by the Administration under this subsection shall be of such sound value as reasonably to assure repayment."

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90-104, set out as a note under section 681 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 687i, 687j of this title; title 42 section 2985a.

§ 684. Equity capital for small-business concerns

(a) Function of investment companies

It shall be a function of each small business investment company to provide a source of equity capital for incorporated and unincorporated small-business concerns, in such manner and under such terms as the small business investment company may fix in accordance with the regulations of the Administration.

(b) Conditions

Before any capital is provided to a small-business concern under this section—

(1) the company may require such concern to refinance any or all of its outstanding indebtedness so that the company is the only holder of any evidence of indebtedness of such concern; and

(2) except as provided in regulations issued by the Administration, such concern shall agree that it will not thereafter incur any indebtedness without first securing the approval of the company and giving the company the first opportunity to finance such indebtedness.

(c) Repealed. Pub. L. 90-104, title II, § 206, Oct. 11, 1967, 81 Stat. 271

(d) Direct or cooperative provision of capital

Equity capital provided to incorporated small business concerns under this section may be provided directly or in cooperation with other investors, incorporated or unincorporated, through agreements to participate on an immediate basis.

(Pub. L. 85-699, title III, § 304, Aug. 21, 1958, 72 Stat. 693; Pub. L. 86-502, § 6, June 11, 1960, 74 Stat. 196; Pub. L. 87-341, § 5, Oct. 3, 1961, 75 Stat. 752; Pub. L. 90-104, title II, § 206, Oct. 11, 1967, 81 Stat. 271; Pub. L. 92-595, § 2(e), Oct. 27, 1972, 86 Stat. 1316.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92-595 extended the function of small business investment companies to provide a source of equity capital to unincorporated business concerns.

1967—Subsec. (c). Pub. L. 90-104 repealed subsec. (c) which authorized purchase of stock of investment companies by small-business concerns in an amount equal to 5 per centum of capital provided.

1961—Subsec. (d). Pub. L. 87-341 added subsec. (d).

1960—Subsec. (a). Pub. L. 86-502 deleted word "primary" preceding "function", and substituted "a source of equity capital for incorporated small-business concerns, in such manner and under such terms as the small business investment company may fix in accordance with the regulations of the Administration" for "a source of needed equity capital for small-business concerns in the manner and subject to the conditions described in this section".

Subsec. (b). Pub. L. 86-502 redesignated subsec. (c) as (b), and eliminated former subsec. (b) which required capital to be secured only through the purchase of debenture bonds.

Subsec. (c). Pub. L. 86-502 redesignated subsec. (d) as (c), and substituted "such concern shall have the right, exercisable in whole or in such part as such concern may elect, to become a stockholder-proprietor by investing in the capital stock of the company 5 per centum" for "such concern shall be required to become a stockholder-proprietor of the company by investing in the capital stock of the company, in an amount equal to not less than 2 percent nor more than 5 percent".

Effective Date of 1967 Amendment

Repeal of subsec. (c) effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90-104, set out as a note under section 681 of this title.

Section Referred to in Other Sections

This section is referred to in title 26 section 1243.

§ 685. Long-term loans to small-business concerns

(a) Authorization

Each company is authorized to make loans, in the manner and subject to the conditions described in this section, to incorporated and unincorporated small-business concerns in order to provide such concerns with funds needed for sound financing, growth, modernization, and expansion.

(b) Direct loans; loans on participation basis

Loans made under this section may be made directly or in cooperation with other lenders, incorporated or unincorporated, through agreements to participate on an immediate or deferred basis.

(c) Maximum rate of interest

The maximum rate of interest for the company's share of any loan made under this section shall be determined by the Administration.

(d) Maturity

Any loan made under this section shall have a maturity not exceeding twenty years.

(e) Soundness of loan; security

Any loan made under this section shall be of such sound value, or so secured, as reasonably to assure repayment.

(f) Extension or renewal

Any company which has made a loan to a small-business concern under this section is authorized to extend the maturity of or renew such loan for additional periods, not exceeding ten years, if the company finds that such extension or renewal will aid in the orderly liquidation of such loan.

(Pub. L. 85-699, title III, § 305, Aug. 21, 1958, 72 Stat. 693; Pub. L. 87-341, § 6, Oct. 3, 1961, 75 Stat. 753; Pub. L. 94-305, title I, § 105, June 4, 1976, 90 Stat. 666.)

Amendments

1976—Subsec. (b). Pub. L. 94-305 struck out provision that in agreements to participate in loans on a deferred basis, the participation by the company shall not be in excess of 90 percentum of the balance of the loan outstanding at the time of disbursement.

1961—Subsec. (b). Pub. L. 87-341 substituted "other lenders, incorporated or unincorporated" for "other lending institutions".

§ 686. Aggregate limitations on amount of assistance to any single enterprise

(a) Percentage limitation of paid-in capital and paid-in surplus

Without the approval of the Administration, the aggregate amount of obligations and securities acquired and for which commitments may be issued by any small business investment company under the provisions of this chapter for any single enterprise shall not exceed 20 percent of the combined private paid-in capital and paid-in surplus of such company.

(b) Repealed. Pub. L. 92-595, § 2(f), Oct. 27, 1972, 86 Stat. 1316

(c) Application of provisions to commitments incurred prior to effective date of section

With respect to obligations or securities acquired prior to the effective date of the Small Business Investment Act Amendments of 1967, and with respect to legally binding commitments issued prior to such date, the provisions of this section as in effect immediately prior to such effective date shall continue to apply.

(Pub. L. 85-699, title III, § 306, Aug. 21, 1958, 72 Stat. 691; Pub. L. 87-341, § 7(a), Oct. 3, 1961, 75 Stat. 753; Pub. L. 88-273, § 4, Feb. 28, 1964, 78 Stat. 146; Pub. L. 90-104, title II, § 207, Oct. 11, 1967, 81 Stat. 271; Pub. L. 92-595, § 2(f), Oct. 27, 1972, 86 Stat. 1316.)

References in Text

This chapter, referred to in subsec. (a), in the original read "this Act", meaning Pub. L. 85-699, which is generally classified to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title.

For effective date of the Small Business Investment Act Amendments of 1967, referred to in subsecs. (b) and (c), see Effective Date of 1967 Amendment note, set out under section 681 of this title.

Amendments

1972—Subsec. (a). Pub. L. 92-595, § 2(f)(1), substituted "combined private paid-in capital" for "combined paid-in capital".

Subsec. (b). Pub. L. 92-595, § 2(f)(2), repealed subsec. (b), which enumerated the items making up the combined paid-in capital and paid-in surplus of companies licensed prior to January 1, 1968.

1967—Subsec. (a). Pub. L. 90-104 substituted "paid-in capital and paid-in surplus of such company" for "capital and surplus of such small business investment company authorized by this chapter".

Subsecs. (b), (c). Pub. L. 90-104 added subsecs. (b) and (c).

1964—Pub. L. 88-273 deleted the $500,000 limitation on amount of assistance to any single enterprise.

1961—Pub. L. 87-341 inserted "or (2) $500,000, whichever is the lesser".

Effective Date of 1967 Amendment

Amendment by Pub. L. 90-104 effective Jan. 1, 1968, see section 211 of Pub. L. 90-104, set out as a note under section 681 of this title.

Effective Date of 1961 Amendment

Section 7(b) of Pub. L. 87-341 provided that: "The amendment made by subsection (a) [to this section] shall apply only with respect to obligations and securities acquired by a small business investment company on or after the date of the enactment of this Act [Oct. 3, 1961]; except that such amendment shall not apply with respect to any obligations or securities so acquired pursuant to a commitment issued before such date."

§ 687. Operation and regulation of companies

(a) Cooperation with banks and other financial institutions

Wherever practicable the operations of a small business investment company, including the generation of business, may be undertaken in cooperation with banks or other investors or lenders, incorporated or unincorporated, and any servicing or initial investigation required for loans or acquisitions of securities by the company under the provisions of this chapter may be handled through such banks or other investors or lenders on a fee basis. Any small business investment company may receive fees for services rendered to such banks and other investors and lenders.

(b) Use of advisory services; depository or fiscal agents; investment of funds

Each small business investment company may make use, wherever practicable, of the advisory services of the Federal Reserve System and of the Department of Commerce which are available for and useful to industrial and commercial businesses, and may provide consulting and advisory services on a fee basis and have on its staff persons competent to provide such services. Any Federal Reserve bank is authorized to act as a depository or fiscal agent for any company operating under provisions of this chapter. Such companies may invest funds not reasonably needed for their current operations in direct obligations of, or obligations guaranteed as to principal and interest by, the United States, or in insured savings accounts (up to the amount of the insurance) in any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation.

(c) Rules and regulations

The Administration is authorized to prescribe regulations governing the operations of small business investment companies, and to carry out the provisions of this chapter, in accordance with the purposes of this chapter.

(d) Forfeiture of rights, privileges, and franchises; jurisdiction

Should any small business investment company violate or fail to comply with any of the provisions of this chapter or of regulations prescribed hereunder, all of its rights, privileges, and franchises derived therefrom may thereby be forfeited. Before any such company shall be declared dissolved, or its rights, privileges, and franchises forfeited, any noncompliance with or violation of this chapter shall be determined and adjudged by a court of the United States of competent jurisdiction in a suit brought for that purpose in the district, territory, or other place subject to the jurisdiction of the United States, in which the principal office of such company is located. Any such suit shall be brought by the United States at the instance of the Administration or the Attorney General.

(e) Liability of United States

Nothing in this chapter or in any other provision of law shall be deemed to impose any liability on the United States with respect to any obligation entered into, or stocks issued, or commitments made, by any company operating under the provisions of this chapter.

(f) Performance of functions, powers, and duties by Administration and Administrator

In the performance of, and with respect to the functions, powers, and duties vested by this chapter, the Administrator and the Administration shall (in addition to any authority otherwise vested by this chapter) have the functions, powers, and duties set forth in the Small Business Act [15 U.S.C. 631 et seq.], and the provisions of sections 13 and 16 of that Act [15 U.S.C. 642, 645], insofar as applicable, are extended to the functions of the Administrator and the Administration under this chapter.

(g) Annual report on Small Business Investment activities

(1) The Administration shall include in its annual report, made pursuant to section 10(a) of the Small Business Act [15 U.S.C. 639(a)], a full and detailed account of its operations under this chapter. Such report shall set forth the amount of losses sustained by the Government as a result of such operations during the preceding fiscal year, together with an estimate of the total losses which the Government can reasonably expect to incur as a result of such operations during the then current fiscal year.

(2) In its annual report for the year ending December 31, 1967, and in each succeeding annual report made pursuant to section 10(a) of the Small Business Act [15 U.S.C. 639(a)], the Administration shall include full and detailed accounts relative to the following matters:

(A) The Administration's recommendations with respect to the feasibility and organization of a small business capital bank to encourage private financing of small business investment companies to replace Government financing of such companies.

(B) The Administration's plans to insure the provision of small business investment company financing to all areas of the country and to all eligible small business concerns including steps taken to accomplish same.

(C) Steps taken by the Administration to maximize recoupment of Government funds incident to the inauguration and administration of the small business investment company program and to insure compliance with statutory and regulatory standards relating thereto.

(D) An accounting by the Office of Management and Budget with respect to Federal expenditures to business by executive agencies, specifying the proportion of said expenditures going to business concerns falling above and below small business size standards applicable to small business investment companies.

(E) An accounting by the Treasury Department with respect to tax revenues accruing to the Government from business concerns, incorporated and unincorporated, specifying the source of such revenues by concerns falling above and below the small business size standards applicable to small business investment companies.

(F) An accounting by the Treasury Department with respect to both tax losses and increased tax revenues related to small business investment company financing of both individual and corporate business taxpayers.

(G) Recommendations of the Treasury Department with respect to additional tax incentives to improve and facilitate the operations of small business investment companies and to encourage the use of their financing facilities by eligible small business concerns.

(H) A report from the Securities and Exchange Commission enumerating actions undertaken by that agency to simplify and minimize the regulatory requirements governing small business investment companies under the Federal securities laws and to eliminate overlapping regulation and jurisdiction as between the Securities and Exchange Commission, the Administration, and other agencies of the executive branch.

(I) A report from the Securities and Exchange Commission with respect to actions taken to facilitate and stabilize the access of small business concerns to the securities markets.

(J) Actions undertaken by the Securities and Exchange Commission to simplify compliance by small business investment companies with the requirements of the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] and to facilitate the election to be taxed as regulated investment companies pursuant to section 851 of title 26.

(h) Limitation on interest rates; overcharge; forfeiture; interest payment recovery

(1) In order to facilitate the orderly and necessary flow of long-term loans and equity funds to small business concerns, as defined in the Small Business Act [15 U.S.C. 631 et seq.], if the maximum interest rate permitted by the Small Business Administration exceeds the rate a small business investment company would be permitted to charge in the absence of this subsection, such small business investment company may in the case of business loans in the amount of $25,000 or more, notwithstanding any State constitution or statute, which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any such loan, interest at a rate of not more than 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the small business investment company is located.

(2) If the rate prescribed in paragraph (1) exceeds the rate such small business investment company would be permitted to charge in the absence of this subsection, and such State fixed rate is thereby preempted by the rate described in paragraph (1), the taking, receiving, reserving or charging a greater rate than is allowed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the loan carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of interest paid from the small business investment company taking or receiving such interest.

(Pub. L. 85-699, title III, § 308, Aug. 21, 1958, 72 Stat. 694; Pub. L. 87-341, §§ 8, 11(c)(d), Oct. 3, 1961, 75 Stat. 753, 756; Pub. L. 88-273, § 5, Feb. 28, 1964, 78 Stat. 147; Pub. L. 89-779, § 3, Nov. 6, 1966, 80 Stat. 1359; Pub. L. 90-104, title II, § 210, Oct. 11, 1967, 81 Stat. 271; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 93-501, title II, § 204, Oct. 29, 1974, 88 Stat. 1559.)

References in Text

This chapter, referred to in subsecs. (a) to (g), in the original read "this Act", meaning Pub. L. 85-699, which is generally classified to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title.

The Small Business Act, referred to in subsecs. (f) and (h), is Pub. L. 85-536, July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§ 631 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 631 of this title and Tables volume.

The Investment Company Act of 1940, referred to in subsec. (g)(2)(J), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§ 80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables volume.

Amendments

1974—Subsec. (h). Pub. L. 93-501 added subsec. (h).

1967—Subsec. (g). Pub. L. 90-104 designated existing provisions as par. (1) and added par. (2).

1966—Subsec. (c). Pub. L. 89-779, § 3(1), struck out provisions subjecting each small business investment company to examinations by examiners approved by the Administration and requiring the submission of reports by the companies. See section 687b(b) of this title.

Subsecs. (f), (g). Pub. L. 89-799, § 3(2), added subsecs. (f) and (g).

1964—Subsec. (b). Pub. L. 88-273 authorized investment of funds in insured savings accounts (up to the amount of insurance) in institutions insured by the Federal Savings and Loan Insurance Corporation.

1961—Subsec. (a). Pub. L. 87-341, § 8, substituted "investors or lenders" for "financial institutions" wherever appearing, and provided that these investors or lenders can be either incorporated or unincorporated.

Subsec. (b). Pub. L. 87-341, § 11(c), substituted "operating under the provisions of this chapter" for "organized under this chapter".

Subsec. (e). Pub. L. 87-341, § 11(d), redesignated former subsec. (g) as (e), and substituted therein, "operating under the provisions of this chapter" for "organized under this chapter", and repealed former subsec. (e) which related to obtaining restraining orders against violators of this chapter.

Subsec. (f). Pub. L. 87-341, § 11(d), repealed subsec. (f) which permitted small business investment companies to extend their corporate existence for a term of not more than 30 years. See subsec. (a) of section 681 of this title.

Subsec. (g). Pub. L. 87-341, § 11(d), redesignated subsec. (g) as (e).

Effective Date of 1974 Amendment

Amendment by Pub. L. 93-501 applicable to loans made in any state after Oct. 29, 1974, but prior to the earlier of July 1, 1977 or the date of enactment by the state of a law prohibiting the charging of interest at the rates provided in the amendment of this section, see section 206 of Pub. L. 93-501, set out as a note under section 1831a of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90-104, set out as a note under section 681 of this title.

TRANSFER OF FUNCTIONS

The Bureau of the Budget was designated as the Office of Management and Budget and Offices of Director of the Bureau of the Budget, Deputy Director of the Bureau of the Budget, and Assistant Directors of the Bureau of the Budget were designated Director of the Office of Management and Budget, Deputy Director of the Office of Management and Budget, and Assistant Directors of the Office of Management and Budget, respectively. Records, property, personnel, and funds of the Bureau of the Budget were transferred to the Office of Management and Budget. See Part I of Reorganization Plan 2 of 1970, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 687h of this title.

§ 687a. Revocation and suspension of licenses; cease and desist orders

(a) Grounds for suspension or revocation

A license may be revoked or suspended by the Administration—

(1) for false statements knowingly made in any written statement required under this subchapter, or under any regulation issued under this subchapter by the Administration;

(2) if any written statement required under this subchapter, or under any regulation issued under this subchapter by the Administrator, fails to state a material fact necessary in order to make the statement not misleading in the light of the circumstances under which the statement was made;

(3) for willful or repeated violation of, or willful or repeated failure to observe, any provision of this chapter;

(4) for willful or repeated violation of, or willful or repeated failure to observe, any rule or regulation of the Administration authorized by this chapter; or

(5) for violation of, or failure to observe, any cease and desist order issued by the Administration under this section.

(b) Grounds for cease and desist order

Where a licensee or any other person has not complied with any provision of this chapter, or of any regulation issued pursuant thereto by the Administration, or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of such chapter or regulation, the Administration may order such licensee or other person to cease and desist from such action or failure to act. The Administration may further order such licensee or other person to take such action or to refrain from such action as the Administration deems necessary to insure compliance with this chapter and the regulations. The Administration may also suspend the license of a licensee, against whom an order has been issued, until such licensee complies with such order.

(c) Order to show cause; contents; hearing; issuance and service

Before revoking or suspending a license pursuant to subsection (a) of this section, or issuing a cease and desist order pursuant to subsection (b) of this section, the Administration shall serve upon the licensee and any other person involved an order to show cause why an order revoking or suspending the license or a cease and desist order should not be issued. Any such order to show cause shall contain a statement of the matters of fact and law asserted by the Administration and the legal authority and jurisdiction under which a hearing is to be held, and shall set forth that a hearing will be held before the Administration at a time and place stated in the order. If after hearing, or a waiver thereof, the Administration determines on the record that an order revoking or suspending the license or a cease and desist order should issue, it shall promptly issue such order, which shall include a statement of the findings of the Administration and the grounds and reasons therefor and specify the effective date of the order, and shall cause the order to be served on the licensee and any other person involved.

(d) Subpena of person, and books, papers and documents; fees and mileage; enforcement

The Administration may require by subpena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to the hearing from any place in the United States. Witnesses summoned before the Administration shall be paid by the party at whose instance they were called the same fees and mileage that are paid witnesses in the courts of the United States. In case of disobedience to a subpena, the Administration, or any party to a proceeding before the Administration, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents.

(e) Petition to modify or set aside order; filing, time and place, Administration to submit record; action of court; review

An order issued by the Administration under this section shall be final and conclusive unless within thirty days after the service thereof the licensee, or other person against whom an order is issued, appeals to the United States court of appeals for the circuit in which such licensee has its principal place of business by filing with the clerk of such court a petition praying that the Administration's order be set aside or modified in the manner stated in the petition. After the expiration of such thirty days, a petition may be filed only by leave of court on a showing of reasonable grounds for failure to file the petition theretofore. The clerk of the court shall immediately cause a copy of the petition to be delivered to the Administration, and the Administration shall thereupon certify and file in the court a transcript of the record upon which the order complained of was entered. If before such record is filed the Administration amends or sets aside its order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Administration. The filing of a petition for review shall not of itself stay or suspend the operation of the order of the Administration, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way. The court may affirm, modify, or set aside the order of the Administration. If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the Administration to reopen the hearing for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Administration may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file its modified or new findings and the amendments, if any, of its order, with the record of such additional evidence. No objection to an order of the Administration shall be considered by the court unless such objection was urged before the Administration or, if it was not so urged, unless there were reasonable grounds for failure to do so. The judgment and decree of the court affirming, modifying, or setting aside any such order of the Administration shall be subject only to review by the Supreme Court of the United States upon certification or certiorari as provided in section 1254 of title 28.

(f) Enforcement of order

If any licensee or other person against which or against whom an order is issued under this section fails to obey the order, the Administration may apply to the United States court of appeals, within the circuit where the licensee has its principal place of business, for the enforcement of the order, and shall file a transcript of the record upon which the order complained of was entered. Upon the filing of the application the court shall cause notice thereof to be served on the licensee or other person. The evidence to be considered, the procedure to be followed, and the jurisdiction of the court shall be the same as is provided in subsection (e) of this section for applications to set aside or modify orders. The proceedings in such cases shall be made a preferred cause and shall be expedited in every way.

(Pub. L. 85-699, title III, § 309, as added Pub. L. 87-341, § 9, Oct. 3, 1961, 75 Stat. 753, and amended Pub. L. 89-779, § 4, Nov. 6, 1966, 80 Stat. 1359.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3), (4) and (b), in the original read "this Act", meaning Pub. L. 85-699, which is generally classified to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-779, § 4(b), inserted reference to revocation in the introductory material preceding par. (1), and, in pars. (1) and (2), deleted restriction which limited the grounds for suspension or revocation for false or misleading statements to the situation in which such statements were made for the purpose of obtaining a license.

Subsec. (b). Pub. L. 89-779, § 4(c), expanded the Administration's authority to issue cease and desist orders by authorizing their issuance against individuals who have not complied with provisions of this chapter and against both licensees and individuals who have violated or are about to violate this chapter or regulations issued pursuant thereto.

Subsec. (c). Pub. L. 89-779, § 4(d), inserted references to persons involved other than the licensee and to the revocation of licenses so as to conform the subsec. to the expansion of the Administration's authority to revoke licenses and to issue cease and desist orders to persons other than licensees under subsecs. (a) and (b).

Subsec. (e). Pub. L. 89-779, § 4(e), authorized the appeal from an order issued by the Administration under this section by other persons, besides the licensee, against whom an order is issued.

Subsec. (f). Pub. 89-779, § 4(f), provided that individuals as well as licensees are to be affected by subsec. (f).

CROSS REFERENCES

Per diem and mileage of witnesses, see section 1821 of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Subpena, see rule 45, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 687h of this title.

§ 687b. Investigations and examinations; power to subpena and take oaths and affirmations; aid of courts; examiners; reports

(a) The Administration may make such investigations as it deems necessary to determine whether a licensee or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation, the Administration is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpena issued to, any person, including a licensee, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

(b) Each small business investment company shall be subject to examinations made by direction of the Administration by examiners selected or approved by the Administration, and the cost of such examinations, including the compensation of the examiners, may in the discretion of the Administration be assessed against the company examined and when so assessed shall be paid by such company. Each such company shall be examined at least once each year, except that the Administrator may waive examination in the case of a company whose operations have been suspended by reason of the fact that the company is involved in litigation or is in receivership. Every such company shall make such reports to the Administration at such times and in such form as the Administration may require; except that the Administration is authorized to exempt from making such reports any such company which is registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] to the extent necessary to avoid duplication in reporting requirements.

(Pub. L. 85-699, title III, § 310, as added Pub. L. 87-341, § 9, Oct. 3, 1961, 75 Stat. 753, and amended Pub. L. 89-779, § 5, Nov. 6, 1966, 80 Stat. 1360; Pub. L. 90-104, title II, § 208, Oct. 11, 1967, 81 Stat. 271.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), in the original read "this Act", meaning Pub. L. 85-699, which is generally classified to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title.

The Investment Company Act of 1940, referred to in subsec. (b), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§ 80a-1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a-51 of this title and Tables volume.

AMENDMENTS

1967—Subsec. (b). Pub. L. 90-104 required at least annual examination of small business investment companies but provided for waiver of examination of a company whose operations have been suspended because the company is involved in litigation or is in receivership.

1966—Pub. L. 89-779 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90-104, set out as a note under section 681 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Order for discovery and production of documents, see rule 34, Title 28, Appendix, Judiciary and Judicial Procedure.

Subpena, see rule 45.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 687g of this title.

§ 687c. Injunctions and other orders

(a) Grounds; jurisdiction of court; preferred causes

Whenever, in the judgment of the Administration, a licensee or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter, the Administration may make application to the proper district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions and, upon a showing by the Administration that such licensee or other person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond. The proceedings in such a case shall be made a preferred cause and shall be expedited in every way.

(b) Equity jurisdiction of licensee and assets thereof

In any such proceeding the court as a court of equity may, to such extent as it deems necessary, take exclusive jurisdiction of the licensee or licensees and the assets thereof, wherever located; and the court shall have jurisdiction in any such proceeding to appoint a trustee or receiver to hold or administer under the direction of the court the assets so possessed.

(c) Trusteeship or receivership over licensee

The Administration shall have authority to act as trustee or receiver of the licensee. Upon request by the Administration, the court may appoint the Administration to act in such capacity unless the court deems such appointment inequitable or otherwise inappropriate by reason of the special circumstances involved.

(Pub. L. 85-699, title III, § 311, as added Pub. L. 87-341, § 9, Oct. 3, 1961, 75 Stat. 753, and amended Pub. L. 89-779, § 6, Nov. 6, 1966, 80 Stat. 1360.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), in the original read "this Act", meaning Pub. L. 85-699, which is generally classified to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title.

AMENDMENTS

1966—Subsec. (c). Pub. L. 89-779 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 687h of this title.

§ 687d. Conflicts of interest

For the purpose of controlling conflicts of interest which may be detrimental to small business concerns, to small business investment companies, to the shareholders or partners of either, or to the purposes of this chapter, the Administration shall adopt regulations to govern transactions with any officer, director, shareholder, or partner of any small business investment company, or with any person or concern, in which any interest, direct or indirect, financial or otherwise, is held by any officer, director, shareholder or partner of (1) any small business investment company, or (2) any person or concern with an interest, direct or indirect, financial or otherwise, in any small business investment company. Such regulations shall include appropriate requirements for public disclosure (including disclosure in the locality most directly affected by the transaction) necessary to the purposes of this section.

(Pub. L. 85-699, title III, § 312, as added Pub. L. 88-273, § 6(a), Feb. 28, 1964, 78 Stat. 147, and amended Pub. L. 94-305, title I, § 106(f), June 4, 1976, 90 Stat. 666.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 85-699, which is generally classified to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title.

CODIFICATION

Phrase "or shareholders" which section 106(f)(2) of Pub. L. 94-305 directed be stricken and replaced with "shareholder, or partner" did not appear in this section as originally enacted. Since the phrase "or shareholder" appeared in two places in this section as originally enacted, the substitution was executed thereto as the probable intent of Congress.

AMENDMENTS

1976—Pub. L. 94-305 inserted "or partners" after "to the shareholders" and substituted "shareholder, or partner" for "or shareholders".

§ 687e. Removal and suspension of directors and officers of licensees

(a) Written notice of intention to remove; grounds

The Administration may serve upon any director or officer of a licensee a written notice of its intention to remove him from office whenever, in the opinion of the Administration, such director or officer—

(1) has willfully and knowingly committed any substantial violation of—

(A) this chapter,

(B) any regulation issued under this chapter, or

(C) a cease-and-desist order which has become final, or

(2) has willfully and knowingly committed or engaged in any act, omission, or practice which constitutes a substantial breach of his fiduciary duty as such director or officer,

and that such violation or such breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer.

(b) Suspension pending completion of administrative proceedings

In respect to any director or officer referred to in subsection (a) of this section, the Administration may, if it deems it necessary for the protection of the licensee or the interests of the Administration, by written notice to such effect served upon such director or officer, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the licensee. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (d) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under subsection (a) of this section and until such time as the Administration shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer, until the effective date of any such order. Copies of any such notice shall also be served upon the interested licensee.

(c) Hearing; order of removal

A notice of intention to remove a director or officer, as provided in subsection (a) of this section, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Administration at the request of (1) such director or officer and for good cause shown, or (2) the Attorney General of the United States. Unless such director or officer shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal. In the event of such consent, or if upon the record made at any such hearing the Administration shall find that any of the grounds specified in such notice has been established, the Administration may issue such orders of removal from office as it deems appropriate. Any such order shall become effective at the expiration of thirty days after service upon such licensee and the director or officer concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforcible except to such extent as it is stayed, modified, terminated, or set aside by action of the Administration or a reviewing court.

(d) Stay by United States District Court of suspension or prohibition

Within ten days after any director or officer has been suspended from office and/or prohibited from participation in the conduct of the affairs of a licensee under subsection (b) of this section, such director or officer may apply to the United States district court for the judicial district in which the home office of the licensee is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director or officer under subsection (a) of this section, and such court shall have jurisdiction to stay such suspension and/or prohibition.

(e) Suspension of directors and officers charged with felonies involving dishonesty or breach of trust; notice; duration of suspension; removal

Whenever any director or officer of a licensee is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the Administration may, by written notice served upon such director or officer, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the licensee. A copy of such notice shall also be served upon the licensee. Such suspension and/or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Administration. In the event that a judgment of conviction with respect to such offense is entered against such director or officer, and at such time as such judgment is not subject to further appellate review, the Administration may issue and serve upon such director or officer an order removing him from office. A copy of such order shall be served upon such licensee, whereupon such director or officer shall cease to be a director or officer of such licensee. A finding of not guilty or other disposition of the charge shall not preclude the Administration from thereafter instituting proceedings to suspend or remove such director or officer from office and/or to prohibit him from further participation in licensee affairs, pursuant to subsection (a) or (b) of this section.

(f) Hearings; procedure; form and requisites of decision; review; stay of orders

(1) Any hearing provided for in this section shall be held in the Federal judicial district or in the territory in which the principal office of the licensee is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5. After such hearing, and within ninety days after the Administration has notified the parties that the case has been submitted to it for final decision, the Administration shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the Administration may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Administration may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to such proceeding may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the director or officer concerned, or an order issued under subsection (e) of this section), by filing in the court of appeals of the United States for the circuit in which the principal office of the licensee is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Administration be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Administration, and thereupon the Administration shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall, except as provided in the last sentence of said paragraph (1), be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Administration. Review of such proceedings shall be had as provided in chapter 7 of title 5. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 1254 of title 28.

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Administration.

(Pub. L. 85-699, title III, § 313, as added Pub. L. 89-779, § 7, Nov. 6, 1966, 80 Stat. 1360.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1)(A), (B), in the original read "this Act", meaning Pub. L. 85-699, which is generally classified to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 687h of this title.

§ 687f. Unlawful acts and omissions by officers, directors, employees, or agents

(a) Violation by licensee deemed violation by persons participating

Wherever a licensee violates any provision of this chapter or regulation issued thereunder by reason of its failure to comply with the terms thereof or by reason of its engaging in any act or practice which constitutes or will constitute a violation thereof, such violation shall be deemed to be also a violation and an unlawful act on the part of any person who, directly or indirectly, authorizes, orders, participates in, or causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions which constitute or will constitute, in whole or in part, such violation.

(b) Breach of fiduciary duty

It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a licensee to engage in any act or practice, or to omit any act, in breach of his fiduciary duty as such officer, director, employee, agent, or participant, if, as a result thereof, the licensee has suffered or is in imminent danger of suffering financial loss or other damage.

(c) Disqualification of officers and employees for dishonesty, fraud, or breach of trust

Except with the written consent of the Administration, it shall be unlawful—

(1) for any person hereafter to take office as an officer, director, or employee of a licensee, or to become an agent or participant in the conduct of the affairs or management of a licensee, if—

(A) he has been convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

(B) he has been found civilly liable in damages, or has been permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust; or

(2) for any person to continue to serve in any of the above-described capacities, if—

(A) he is hereafter convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

(B) he is hereafter found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust.

(Pub. L. 85-699, title III, § 314, as added Pub. L. 89-779, § 7, Nov. 6, 1966, 80 Stat. 1363.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), in the original read "this Act", meaning Pub. L. 85-699, which is generally classified to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title.

§ 687g. Penalties and forfeitures

(a) Except as provided in subsection (b) of this section, a licensee which violates any regulation or written directive issued by the Administrator, requiring the filing of any regular or special report pursuant to section 687b(b) of this title, shall forfeit and pay to the United States a civil penalty of not more than $100 for each and every day of the continuance of the licensee's failure to file such report, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The civil penalties provided for in this section shall accrue to the United States and may be recovered in a civil action brought by the Administration.

(b) The Administration may by rules and regulations, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing, exempt in whole or in part, any small business investment company from the provisions of subsection (a) of this section, upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the Administration finds that such action is not inconsistent with the public interest or the protection of the Administration. The Administration may for the purposes of this section make any alternative requirements appropriate to the situation.

(Pub. L. 85-699, title III, § 315, as added Pub. L. 89-779, § 7, Nov. 6, 1966, 80 Stat. 1364.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 687h of this title.

§ 687h. Jurisdiction and service of process

Any suit or action brought under section 687, 687a, 687c, 687e, or 687g of this title by the Administration at law or in equity to enforce any liability or duty created by, or to enjoin any violation of, this chapter, or any rule, regulation, or order promulgated thereunder, shall be brought in the district wherein the licensee maintains its principal office, and process in such cases may be served in any district in which the defendant maintains its principal office or transacts business, or wherever the defendant may be found.

(Pub. L. 85-699, title III, § 316, as added Pub. L. 89-779, § 7, Nov. 6, 1966, 80 Stat. 1364.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 85-699, which is generally classified to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title.

§ 687i. Interest rates on debentures

Notwithstanding section 683(b) of this title, the effective rate of interest after October 13, 1971, during the first five years thereafter of the term of any debenture purchased by the Administration from a small business investment company under authority of section 683(c) of this title, shall be the greater of 3 per centum or 3 percentage points below the interest rate determined pursuant to section 683(b) of this title. The Administration is authorized to apply interest paid to it by such company for the period from October 13, 1971, to October 27, 1972, without interest thereon, to interest payable after October 27, 1972. No company which has received the benefit of this section may make a distribution (other than to the Administration) unless it has first paid to the Administration an amount equal to the difference between the rate of interest payable to the Administration pursuant to the previous sentence, and the rate of interest which would have been payable pursuant to section 683(b) of this title.

(Pub. L. 85-699, title III, § 317, as added Pub. L. 92-595, § 2(g), Oct. 27, 1972, 86 Stat. 1316.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 683, 687j of this title.

§ 687j. Extension of benefits to joint ownership companies

The Administration is authorized to extend the benefits of sections 683(c) and 687i of this title to any small business investment company operating under authority of section 681(d) of this title, and which is owned, in whole or in part, by one or more small business investment companies, in accordance with regulations promulgated by the Administration.

(Pub. L. 85-699, title III, § 318, as added Pub. L. 92-595, § 2(g), Oct. 27, 1972, 86 Stat. 1316.)

§ 688. Repealed. Pub. L. 87-341, § 11(e), Oct. 3, 1961, 75 Stat. 756

Section, Pub. L. 85-699, title III, § 309, Aug. 21, 1958, 72 Stat. 696, related to the approval of State chartered investment companies. See subsec. (a) of section 681 of this title.

SUBCHAPTER IV—STATE CHARTERED INVESTMENT COMPANIES AND STATE DEVELOPMENT COMPANIES

§ 691. Repealed. Pub. L. 87-341, § 11(f), Oct. 3, 1961, 75 Stat. 756

Section, Pub. L. 85-699, title IV, § 401, Aug. 21, 1958, 72 Stat. 696, related to the conversion of any investment company, or any State development company, into a small business investment company.

SUBCHAPTER IV-A—GUARANTEES

PART A—COMMERCIAL OR INDUSTRIAL LEASE AND QUALIFIED CONTRACT GUARANTEES

§ 692. Authority of Administration to guarantee payment of rentals by small business concerns under leases of commercial and industrial property

(a) Nonavailability of guarantees from other sources; participation with qualified sureties

The Administration may, whenever it determines such action to be necessary or desirable, and upon such terms and conditions as it may prescribe, guarantee the payment of rentals under leases of commercial and industrial property entered into by small business concerns to enable such concerns to obtain such leases. Any such guarantee may be made or effected either directly or in cooperation with any qualified surety company or other qualified company through a participation agreement with such company. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) No guarantee shall be issued by the Administration (A) if a guarantee meeting the requirements of the applicant is otherwise available on reasonable terms, and (B) unless the Administration determines that there exists a reasonable expectation that the small business concern in behalf of which the guarantee is issued will perform the covenants and conditions of the lease.

(2) The Administration shall, to the greatest extent practicable, exercise the powers conferred by this section in cooperation with qualified surety or other companies on a participation basis.

(b) Uniform annual fee; processing fees

The Administration shall fix a uniform annual fee for its share of any guarantee under this section which shall be payable in advance at such time as may be prescribed by the Administrator. The amount of any such fee shall be determined in accordance with sound actuarial practices and procedures, to the extent practicable, but in no case shall such amount exceed, on the Administration's share of any guarantee made under this part, 2½ per centum per annum of the minimum annual guaranteed rental payable under any guaranteed lease: *Provided*, That the Administration shall fix the lowest fee that experience under the program established hereby has shown to be justified. The Administration may also fix such uniform fees for the processing of applications for guarantees under this section as the Administrator determines are reasonable and necessary to pay the administrative expenses that are incurred in connection therewith.

(c) Escrow; default; additional discretionary provisions

In connection with the guarantee of rentals under any lease pursuant to authority conferred by this section, the Administrator may require, in order to minimize the financial risk assumed under such guarantee—

(1) that the lessee pay an amount, not to exceed one-fourth of the minimum guaranteed annual rental required under the lease, which shall be held in escrow and shall be available (A) to meet rental charges accruing in any month for which the lessee is in default, or (B) if no default occurs during the term of the lease, for application (with accrued interest) toward final payments of rental charges under the lease;

(2) that upon occurrence of a default under the lease, the lessor shall, as a condition precedent to enforcing any claim under the lease guarantee, utilize the entire period, for which there are funds available in escrow for payment of rentals, in reasonably diligent efforts to eliminate or minimize losses, by releasing the commercial or industrial property covered by the lease to another qualified tenant, and no claim shall be made or paid under the guarantee until such effort has been made and such escrow funds have been exhausted;

(3) that any guarantor of the lease will become a successor of the lessor for the purpose of collecting from a lessee in default rentals which are in arrears and with respect to which the lessor has received payment under a guarantee made pursuant to this section; and

(4) such other provisions, not inconsistent with the purposes of this part, as the Administrator may in his discretion require.

(Pub. L. 85-699, title IV, § 401, as added Pub. L. 89-117, title III, § 316(a), Aug. 10, 1965, 79 Stat. 482, and amended Pub. L. 90-104, title II, § 209, Oct. 11, 1967, 81 Stat. 271; Pub. L. 91-609, title IX, § 911(a)(2), Dec. 31, 1970, 84 Stat. 1812.)

AMENDMENTS

1970—Pub. L. 91-609 substituted "part" for "title" in subsecs. (b) and (c)(4).

1967—Subsec. (a). Pub. L. 90-104 struck out from the introductory text "that are (1) eligible for loans under section 636(b)(3) of this title, or (2) eligible for loans under subchapter IV of chapter 34 of Title 42," following "small business concerns".

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-104 effective 90 days after Oct. 11, 1967, see section 211 of Pub. L. 90-104, set out as a note under section 681 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 694 of this title.

§ 693. Powers of Administration respecting loans; liquidation of obligations through creation of new leases, execution of subleases, and assignments of leases

Without limiting the authority conferred upon the Administrator and the Administration by section 671 of this title, the Administrator and the Administration shall have, in the performance of and with respect to the functions, powers, and duties conferred by this part, all the authority and be subject to the same conditions prescribed in section 634(b) of this title with respect to loans, including the authority to execute subleases, assignments of lease and new leases with any person, firm, organization, or other entity, in order to aid in the liquidation of obligations of the Administration hereunder.

(Pub. L. 85-699, title IV, § 402, as added Pub. L. 89-117, title III, § 316(a), Aug. 10, 1965, 79 Stat. 483, and amended Pub. L. 91-609, title IX, § 911(a)(2), Dec. 31, 1970, 84 Stat. 1812.)

AMENDMENTS

1970—Pub. L. 91-609 substituted "part" for "title".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 694-1 of this title.

§ 694. Revolving fund for commercial or industrial lease guarantees; interest

There is hereby created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitations as a revolving fund for the purposes of section 692 of this title. There are authorized to be appropriated to the fund from time to time such amounts not to exceed $10,000,000 to provide capital for the fund. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with section 692 of this title, shall be deposited in the fund. All expenses and payments pursuant to operations of the Administrator under section 692 of this title shall be paid from the fund. From time to time, and at least at the close of each fiscal year, the Administrator shall pay from the fund into Treasury as miscellaneous receipts interest at a rate determined by the Secretary of the Treasury on the cumulative amount of appropriations available as capital to the fund, less the average undisbursed cash balance in the fund during the year. The rate of such interest shall be determined by the Secretary of the Treasury, and shall not be less than a rate determined by taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturity of guarantees from the fund. Moneys in the fund not needed for the payment of current operating expenses or for the payment of claims arising under section 692 of this title may be invested in bonds or other obligations of, or bonds or other obligations guaranteed as to principal and interest by, the United States; except that moneys provided as capital for the fund shall not be so invested.

(Pub. L. 85-699, title IV, § 403, as added Pub. L. 89-117, title III, § 316(a), Aug. 10, 1965, 79 Stat. 484, and amended Pub. L. 91-609, title IX, § 911(a)(3), Dec. 31, 1970, 84 Stat. 1812; Pub. L. 93-386, § 6(a)(2), Aug. 23, 1974, 88 Stat. 747; Pub. L. 94-305, title I, § 103, June 4, 1976, 90 Stat. 665.)

AMENDMENTS

1976—Pub. L. 94-305 substituted "section 692 of this title" for "this part" wherever appearing.

1974—Pub. L. 93-386 substituted provisions establishing within the Treasury a separate fund for guarantees available to the Administrator without fiscal year limitations as a revolving fund to carry out the purposes of this part and setting forth appropriations, deposits, expenditures, etc., of such funds, for provisions establishing a revolving fund for use by the Administration to carry out the purposes of this part and part B of this subchapter and setting forth capitalization, deposits, expenditures, etc., of such fund.

1970—Pub. L. 91-609 inserted "of this part and part B" preceding "of this subchapter" and "shall not be so invested but" preceding "shall be returned", increased limitation on initial capital for fund from $5,000,000 to $10,000,000, substituted "under such programs" for "under such program", and provided for payment into miscellaneous receipts of the Treasury interest on net outstanding disbursements of initial capital from the fund at rates taking into consideration average yield on outstanding long-term interest-bearing marketable public debt obligations of the United States as of month of June preceding such fiscal year.

FISCAL YEAR TRANSITION PERIOD OF JULY 1, 1976, THROUGH SEPTEMBER 30, 1976, DEEMED FISCAL YEAR

Fiscal year transition period of July 1, 1976, through Sept. 30, 1976, deemed fiscal year for purposes of this subchapter, see section 201(27) of Pub. L. 94-274, set out as a note under section 343 of Title 7, Agriculture.

ALLOCATION OF CAPITAL PREVIOUSLY TRANSFERRED TO REVOLVING FUND; TRANSFER OF FUNDS FROM BUSINESS LOAN AND INVESTMENT REVOLVING FUND

Section 6(b) of Pub. L. 93-386 provided that: "Unexpected [Unexpended] balances of capital previously transferred to the fund pursuant to section 403 of the Small Business Investment Act of 1958 (15 U.S.C. 694) [this section], as in effect prior to the effective date of this Act [Aug. 23, 1974], shall be allocated, together with related assets and liabilities, to the funds established by paragraphs (2) and (4) of subsection (a) of this section [amending this section and enacting section 694c of this title] in such amounts as the Administrator shall determine. In addition, the Administrator is authorized to transfer to the fund established by paragraph (4) of subsection (a) of this section [enacting section 694c of this title] not to exceed $2,000,000 from the fund established under section 4(c)(1)(B) of the Small Business Act [section 633(c)(1)(B) of this title]: *Provided*, That section 4(c)(6) [section 633(c)(6) of this title] and the last sentence of section 4(c)(5) [section 633(c)(5) of this title] shall not apply to any amounts so transferred."

§ 694-1. Planning design or installation of pollution control facilities

(a) Definitions

For purposes of this section, the term—

(1) "pollution control facilities" means such property (both real and personal) as the Administration in its discretion determines is likely to help prevent, reduce, abate, or control noise, air or water pollution or contamination by removing, altering, disposing or storing pollutants, contaminants, wastes, or heat, and such property (both real and personal) as the Administration determines will be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste.

(2) "person" includes corporations, companies, associations, firms, partnerships, societies, joint stock companies, States, territories, and possessions of the United States, or subdivisions of any of the foregoing, and the District of Columbia, as well as individuals.

(3) "qualified contract" means a lease, sublease, loan agreement, installment sales contract, or similar instrument, entered into between a small business concern and any person.

(b) Financing disadvantage; guarantee of payment by Administration; restrictions and limitations

The Administration may, whenever it determines that small business concerns are or are likely to be at an operational or financing disadvantage with other business concerns with respect to the planning, design, or installation of pollution control facilities, or the obtaining of financing therefor (including financing by means of revenue bonds issued by States, political subdivisions thereof, or other public bodies), guarantee the payment of rentals or other amounts due under qualified contracts. Any such guarantee may be made or effected either directly or in cooperation with any qualified surety company or other qualified company through a participation agreement with such company. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) Notwithstanding any other law, rule, or regulation or fiscal policy to the contrary, the guarantee authorized in the case of pollution control facilities or property may be issued when such property is acquired by the use of proceeds from industrial revenue bonds which provide the holders interest which is exempt from Federal income tax.

(2) Any such guarantee shall be for the full amount of the payments due under such qualified contract and shall be a full faith and credit obligation of the United States.

(3) No guarantee shall be issued by the Administration unless the Administration determines that there exists a reasonable expectation that the small business concern in behalf of which the guarantee is issued will perform the covenants and conditions of the qualified contract.

(c) Uniform annual fees; processing fees; time and condition for payment; periodic review

The Administration shall fix a uniform annual fee for any guarantee issued under this section which shall be payable at such time and under such conditions as may be prescribed by the Administrator. The fee shall be set at an amount which the Administration deems reasonable and necessary and shall be subject to periodic review in order that the lowest fee that experience under the program shows to be justified will be placed into effect. In no case shall such amount exceed 3½ per centum per annum of the minimum annual guaranteed rental payable under any qualified contract guaranteed under this section. The Administration may also fix such uniform fees for the processing of applications for guarantees under this section as the Administrator determines are reasonable and necessary to pay the administrative expenses that are incurred in connection therewith.

(d) Requirements of Administration; escrow; default; discretionary provisions

In connection with the guarantee of rentals under any qualified contract pursuant to authority conferred by this section, the Administrator may require, in order to minimize the financial risk assumed under such guarantee—

(1) that the lessee pay an amount, not to exceed one-fourth of the average annual payments for which a guarantee is issued under this section, which shall be held in escrow and shall be available (A) to meet rental charges accruing in any month for which the lessee is in default, or (B) if no default occurs during the term of the qualified contract, for application (with accrued interest) toward final payments of rental charges under the qualified contract;

(2) that upon occurrence of a default under the qualified contract, the lessor shall, as a condition precedent to enforcing any claim under the qualified contract guarantee, utilize the entire period, for which there are funds available in escrow for payment of rentals, in reasonable diligent efforts to eliminate or minimize losses, by releasing the property covered by the qualified contract to another qualified lessee, and no claim shall be made or paid under the guarantee until such effort has been made and such escrow funds have been exhausted;

(3) that any guarantor of the qualified contract will become a successor of the lessor for the purpose of collecting from a lessee in default rentals which are in arrears and with respect to which the lessor has received payment under a guarantee made pursuant to this section; and

(4) such other provisions, not inconsistent with the purposes of this section as the Administrator may in his discretion require.

(e) Assignment of guarantee

Any guarantee issued under this section may be assigned with the permission of the Administration by the person to whom the payments under qualified contracts are due.

(f) Application of section 693 of this title

Section 693 of this title shall apply to the administration of this section.

(Pub. L. 85-699, title IV, § 404, as added Pub. L. 94-305, title I, § 102, June 4, 1976, 90 Stat. 663.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 694-2 of this title.

§ 694-2. Revolving fund for qualified contract guarantees; interest

There is hereby created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitations as a revolving fund for the purposes of section 694-1 of this title. There are authorized to be appropriated to the fund from time to time such amounts not to exceed $15,000,000 to provide capital for the fund. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with section 694-1 of this title shall be deposited in the fund. All expenses and payments pursuant to operations of the Administrator under section 694-1 of this title shall be paid from the fund. From time to time, and at least at the close of each fiscal year, the Administrator shall pay from the fund into the Treasury as miscellaneous receipts interest at a rate determined by the Secretary of the Treasury on the cumulative amount of appropriations available as capital to the fund, less the average undisbursed cash balance in the fund during the year. The rate of such interest shall be determined by the Secretary of the Treasury, and shall not be less than a rate determined by taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturity of guarantees from the fund. Moneys in the fund not needed for the payment of current operating expenses or for the payment of claims arising under section 694-1 of this title may be invested in bonds or other obligations of, or bonds or other obligations guaranteed as to principal and interest by, the United States; except that moneys provided as capital for the fund shall not be so invested."

(Pub. L. 85-699, title IV, § 405, as added Pub. L. 94-305, title I, § 102, June 4, 1976, 90 Stat. 665.)

PART B—SURETY BOND GUARANTEES

§ 694a. Definitions

As used in this part—

(1) The term "bid bond" means a bond conditioned upon the bidder on a contract entering into the contract, if he receives the award thereof, and furnishing the prescribed payment bond and performance bond.

(2) The term "payment bond" means a bond conditioned upon the payment by the principal of money to persons under contract with him.

(3) The term "performance bond" means a bond conditioned upon the completion by the principal of a contract in accordance with its terms.

(4) The term "surety" means the person who (A) under the terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of the bond, (B) under the terms of a performance bond, undertakes to incur the cost of fulfilling the terms of a contract in the event the principal breaches the conditions of the contract, or (C) under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work provided for in the contract if the principal fails to make prompt payment.

(5) The term "obligee" means (A) in the case of a bid bond, the person requesting bids for the performance of a contract, or (B) in the case of a payment bond or performance bond, the person who has contracted with a principal for the completion of the contract and to whom the obligation of the surety runs in the event of a breach by the principal of the conditions of a payment bond or performance bond.

(6) The term "principal" means (A) in the case of a bid bond, a person bidding for the award of a contract, or (B) the person primarily liable to complete a contract for the obligee, or to make payments to other persons in respect of such contract, and for whose performance of his obligation the surety is bound under the terms of a payment or performance bond. A principal may be a prime contractor or a subcontractor.

(7) The term "prime contractor" means the person with whom the obligee has contracted to perform the contract.

(8) The term "subcontractor" means a person who has contracted with a prime contractor or with another subcontractor to perform a contract.

(Pub. L. 85-699, title IV, § 410, as added Pub. L. 91-609, title IX, § 911(a)(4), Dec. 31, 1970, 84 Stat. 1813.)

TECHNICAL ASSISTANCE IN CONNECTION WITH CONSTRUCTION CONTRACTS; AUTHORIZATION OF APPROPRIATIONS

Section 911(b) of Pub. L. 91-609 authorized the Secretary of Housing and Urban Development to take such steps and carry out such activities as he determined to be necessary or desirable to provide, either directly or by contract or other arrangement, technical assistance to any contractor or subcontractor for whom a bid, payment, or performance bond is guaranteed under part B of title IV of the Small Business Investment Act of 1958 [this part] in connection with any construction contract, in order to assist such contractor or subcontractor in obtaining or carrying out such contract, and authorized to be appropriated for each of the first three fiscal years ending after the date of the enactment of this Act [Dec. 31, 1970] such sums, not to exceed $1,500,000, as were necessary to enable the Secretary to carry out his functions under paragraph (1).

§ 694b. Authority of Administration to guarantee surety against loss for principal's breach of bond

(a) Limitation of liability; conditions

The Administration may, in consultation with the Secretary of Housing and Urban Development and upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety against loss, as hereinafter provided, as the result of the breach of the terms of a bid bond, payment bond, or performance bond by a principal on any contract up to $1,000,000 in amount, subject to the following conditions:

(1) The person who would be the principal of the bond is a small business concern.

(2) The bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon.

(3) Such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section.

(4) The Administration determines that there is a reasonable expectation that such person will perform the covenants and conditions of the contract with respect to which the bond is required.

(5) The contract meets requirements established by the Administration for feasibility of successful completion and reasonableness of cost.

(6) The terms and conditions of any bond guaranteed under the authority of this part are reasonable in light of the risks involved and the extent of the surety's participation.

(b) Extent of liability

Any contract of guarantee under this section shall obligate the Administration to pay to the surety a sum not to exceed 90 per centum of the loss incurred by the surety in fulfilling the terms of his contract as the result of the breach by the principal of the terms of a bid bond, performance bond, or payment bond.

(c) Administration of program; uniform annual fees; processing fees; bond fees; publication of program costs; study and report to Congress of economic soundness of program

The Administration shall administer this program on a prudent and economically justifiable basis and shall fix a uniform annual fee which it deems reasonable and necessary for any guarantee issued under this section, to be payable at such time and under such conditions as may be determined by the Administration. Such fee shall be subject to periodic review in order that the lowest fee that experience under the program shows to be justified will be placed into effect. The Administration shall also fix such uniform fees for the processing of applications for guarantees under this section as it determines are reasonable and necessary to pay administrative expenses incurred in connection therewith. Any contract of guarantee under this section shall obligate the surety to pay the Administration such portions of the bond fee as the Administration determines to be reasonable in the light of the relative risks and costs involved. Within 30 days after August 23, 1974, and at monthly intervals thereafter, the Administration shall publish the cost of the program to the Administration for the month immediately preceding the date of publication. The Administration shall conduct a study of the program in order to determine what must be done to make the program economically sound. Within one year after August 23, 1974, the Administration shall transmit a report to Congress containing a detailed statement of the findings and conclusions of the study, together with its recommendations for such legislative and administrative actions as it deems appropriate.

(d) Application of section 693 of this title

The provisions of section 693 of this title shall apply in the administration of this section.

(Pub. L. 85-699, title IV, § 411, as added Pub. L. 91-609, title IX, § 911(a)(4), Dec. 31, 1970, 84 Stat. 1813, and amended Pub. L. 93-386, §§ 6(a)(3), 11, Aug. 23, 1974, 88 Stat. 747, 749.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-386, § 6(a)(3), substituted "$1,000,000" for "$500,000".

Subsec. (c). Pub. L. 93-386, § 11, added provisions relating to the administration of the program on a prudent and economically justifiable basis and provisions requiring the Administration to publish the cost of the program to the Administration, to conduct a study of the program in order to determine what must be done to make the program economically sound, and to transmit a report to Congress of the findings, conclusions, and recommendations of the study.

§ 694c. Revolving fund for surety bond guarantees

There is hereby created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitation as a revolving fund for the purposes of this part. There are authorized to be appropriated to the fund from time to time such amounts not to exceed $56,500,000 to provide capital for the fund. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with this part, shall be deposited in the fund. All expenses and payments pursuant to operations of the Administrator under this part shall be paid from the fund. From time to time, and at least at the close of each fiscal year, the Administrator shall pay from the fund into Treasury as miscellaneous receipts interest at a rate determined by the Secretary of the Treasury on the cumulative amount of appropriations available as capital to the fund, less the average undisbursed cash balance in the fund during the year. The rate of such interest shall be determined by the Secretary of the Treasury, and shall not be less than a rate determined by taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturity of guarantees from the fund. Moneys in the fund not needed for the payment of current operating expenses or for the payment of claims arising under this part may be invested in bonds or other obligations of, or bonds or other obligations guaranteed as to principal and interest by, the United States; except that moneys provided as capital for the fund shall not be so invested.

(Pub. L. 85-699, title IV, § 412, as added Pub. L. 93-386, § 6(a)(4), Aug. 23, 1974, 88 Stat. 747, and amended Pub. L. 94-305, title I, § 113, June 4, 1976, 90 Stat. 667.)

AMENDMENTS

1976—Pub. L. 94-305 substituted "$56,500,000" for "$35,000,000".

ALLOCATIONS OF CAPITAL PREVIOUSLY TRANSFERRED TO REVOLVING FUND; TRANSFER OF FUNDS FROM BUSINESS LOAN AND INVESTMENT REVOLVING FUND

Allocation to revolving fund of capital previously transferred and transfer of funds to revolving fund from business loan and investment revolving fund, see section 6(b) of Pub. L. 93-386, set out as a note under section 694 of this title.

SUBCHAPTER V—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 633 of this title.

§ 695. Authorization; advancement of funds in exchange for obligations; maximum amount of obligations purchased and outstanding

(a) The Administration is authorized to make loans to State development companies to assist in carrying out the purposes of this chapter. Any funds advanced under this subsection shall be in exchange for obligations of the development company which bear interest at such rate, and contain such other terms, as the Administration may fix, and funds may be so advanced without regard to the use and investment by the development company of funds secured by it from other sources.

(b) The total amount of obligations purchased and outstanding at any one time by the Administration under this section from any one State development company shall not exceed the total amount borrowed by it from all other sources. Funds advanced to a State development company under this section shall be treated on an equal basis with those funds borrowed by such company after August 21, 1958, regardless of source, which have the highest priority, except when this requirement is waived by the Administrator.

(Pub. L. 85-699, title V, § 501, Aug. 21, 1958, 72 Stat. 696.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), in the original read "this Act", meaning Pub. L. 85-699, which is generally classified to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 696 of this title.

§ 696. Loans for plant acquisition, construction, conversion or expansion; restrictions and limitations

The Administration may, in addition to its authority under section 695 of this title, make loans for plant acquisition, construction, conversion or expansion, including the acquisition of land, to State and local development companies, and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis: *Provided, however,* That the foregoing powers shall be subject to the following restrictions and limitations:

(1) All loans made shall be so secured as reasonably to assure repayment. In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.

(2) The proceeds of any such loan shall be used solely by such borrower to assist in identifiable small-business concern and for a sound business purpose approved by the Administration.

(3) Loans made by the Administration under this section shall be limited to $500,000 for each such identifiable small-business concern.

(4) Any development company assisted under this section must meet criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration.

(5) No loans, including extensions or renewals thereof, shall be made by the Administration for a period or periods exceeding twenty-five years plus such additional period as is estimated may be required to complete construction, conversion, or expansion, but the Administration may extend the maturity of or renew any loan made pursuant to this section beyond the period stated for additional periods, not to exceed ten years, if such extension or renewal will aid in the orderly liquidation of such loan. Any such loan shall bear interest at a rate fixed by the Administration.

(Pub. L. 85-699, title V, § 502, Aug. 21, 1958, 72 Stat. 697; Pub. L. 87-27, § 26, May 1, 1961, 75 Stat. 63; Pub. L. 87-341, § 10, Oct. 3, 1961, 75 Stat. 756; Pub. L. 94-305, title I, §§ 108(a), 110, June 4, 1976, 90 Stat. 666, 667.)

AMENDMENTS

1976—Pub. L. 94-305, § 108(a), inserted "acquisition," after "plant" in the provisions preceding par. (1).

Par. (3). Pub. L. 94-305, § 110, substituted "$500,000" for "$350,000".

1961—Par. (3). Pub. L. 87-341, § 10(1), substituted "$350,000" for "$250,000".

Par. (5). Pub. L. 87-341, § 10(2), substituted "twenty-five" for "ten" preceding "years plus such additional period".

Par. (6). Pub. L. 87-27 eliminated par. (6) which provided for termination of authority of the Administration to make loans to local development companies after June 30, 1961.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 of section 2985a.

CHAPTER 15—ECONOMIC RECOVERY

SUBCHAPTER I—GENERALLY

Sec.
701. Omitted
702 to 702f. Repealed.
703 to 712. Omitted
712a. Limitation of obligations for administrative expenses of certain agencies; limitation on life of certain agencies.
713. Omitted.
713a to 713a-2. Repealed.
713a-3. Omitted.
713a-4. Obligations of Commodity Credit Corporation; issuance; sale; purchase; redemption; etc.
713a-5. Exemption of Commodity Credit Corporation and its obligations from taxation.
713a-6. Sale of surplus agricultural commodities to foreign governments.
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713a-11. Annual appropriations to reimburse Commodity Credit Corporation for net realized loss.
713a-11a. Interest prohibited when reimbursing Corporation for net realized losses.
713a-12. Deposit of net realized gain of Commodity Credit Corporation in Treasury.
713a-13. Policies and procedures for minimum acquisition of stocks by Commodity Credit Corporation, encouragement of marketing through private trade channels and procurement of maximum returns in marketplace for producers and Corporation.
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713c. Federal Surplus Commodities Corporation; continuance of existence; purchase and distribution of surplus agricultural commodities.
713c-1. Annual report to Congress by Federal Surplus Commodities Corporation.
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    (a) Transfer of funds.
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    (c) Cooperation by Secretary of Commerce with other agencies, etc.; advisory committee.
    (d) Retransfer of funds for purposes of section 713c-2.
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SUBCHAPTER II—COMMODITY CREDIT CORPORATION

714. Creation and purpose of Corporation.
714a. Location of offices.
714b. General powers of Corporation.
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Sec.
714d. Laws applicable to Corporation.
714e. Capital stock; amount; interest.
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714g. Board of Directors.
  (a) Composition; appointment, tenure and compensation; quorum; duties.
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714j. Utilization of associations and trade facilities.
714k. Records; annual report.
714*l*. Interest of Members of the Congress.
714m. Crimes and offenses.
  (a) False statements; overvaluation of securities.
  (b) Embezzlement, etc.; false entries; fraudulent issue of obligations of corporation.
  (c) Larceny; conversion of property.
  (d) Conspiracy to commit offense.
  (e) General statutes applicable.
  (f) Use of words "Commodity Credit Corporation".
714n. Transfer of assets of Commodity Credit Corporation, a Delaware Corporation.
714*o*. Dissolution of Delaware Corporation.
714p. Release of innocent purchasers of converted goods.

SUBCHAPTER I—GENERALLY

§ 701. Omitted

Codification

Section was section 1 of the National Industrial Recovery Act of June 16, 1933, ch. 90, 48 Stat. 195, as amended and modified by act June 14, 1935, ch. 246, 49 Stat. 375, which declared a national emergency and laid down policy objectives for the industrial recovery. After the act was held unconstitutional in *A. L. A. Schechter Poultry Corporation* v. *U.S.* (N.Y. 1935, 55 S.Ct. 837, 295 U.S. 495, 79 L.Ed. 1570, 97 A.L.R. 947), the National Recovery Administration was terminated and its functions and agencies transferred by Executive Orders Nos. 7252 and 7323, set out under sections 703 to 712 of this title.

§§ 702 to 702f. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 648

Section 702, act June 16, 1933, ch. 90, § 2, 48 Stat. 195, and sections 702a to 702f, act June 19, 1934, ch. 677, §§ 1 to 6, 48 Stat. 1183, provided for the establishment of agencies to administer the National Industrial Recovery Act during the period of emergency and for the regulation of employer-employee relations.

§§ 703 to 712. Omitted

Codification

Sections 703 to 712 of this title were sections 3 to 10, 303, and 304 of the National Industrial Recovery Act of June 16, 1933, ch. 90, 48 Stat. 195, as amended and modified by act June 14, 1935, ch. 246, 49 Stat. 375. After the act was held unconstitutional in *A. L. A. Schechter Poultry Corporation* v. *U.S.* (N. Y. 1935, 55 S. Ct. 837, 295 U. S. 495, 79 L. Ed. 1570, 97 A. L. R. 947), the National Recovery Administration was terminated and its functions and agencies transferred by Executive Order Nos. 7252 and 7323, set out below. For history of the Commodity Credit Corporation, the Electric Home and Farm Authority, and the Export-Import Bank of Washington, see notes under section 712a of this title.

Ex. Ord. No. 7252. Terminating the National Recovery Administration and Transferring Certain Agencies and Functions Thereof to the Departments of Commerce and Labor

Ex. Ord. No. 7252, Dec. 21, 1935, provided:

1. The National Recovery Administration and the office of Administrator thereof are hereby terminated.

2. The Division of Review, the Division of Business Cooperation, and the Advisory Council, as constituted by Ex. Ord. No. 7075 of June 15, 1935, together with all of their officers and employees, files, records, equipment, and property of every kind, are hereby transferred to the Department of Commerce. The Secretary of Commerce is authorized and directed, under the general direction of the President, to appoint, employ, discharge, and fix the compensation and define the duties and direct the conduct of all officers and employees engaged in the administration of the agencies transferred by this Order to the Department of Commerce, to exercise and perform in connection with the said agencies the functions and duties now exercised and performed, or authorized to be exercised and performed, by the National Recovery Administration, to report to the President on all matters relating thereto, and to terminate the functions and duties of the said agencies not later than April 1, 1936.

3. The Consumers' Division, established within the National Recovery Administration by Executive Order No. 7120 of July 30, 1935, together with all of its officers and employees, files, records, equipment, and property of every kind, are hereby transferred to the Department of Labor. The Secretary of Labor is authorized and directed, under the general direction of the President, to appoint, employ, discharge, and fix the compensation and define the duties and direct the conduct of all officers and employees as may be engaged in the administration of the said Consumers' Division, to exercise and perform in connection with said Consumers' Division the functions and duties now exercised and performed, or authorized to be exercised and performed, by the National Recovery Administration, and to report to the President on all matters relating thereto.

4. No person transferred by this Order shall by such transfer acquire a civil service status. Any new appointments under this Order may be made without regard to the Civil Service Rules and Regulations.

5. All Orders and Regulations heretofore issued concerning the administration of Title I of the National Industrial Recovery Act, as amended, are hereby modified to the extent necessary to make this Order fully effective.

6. This Order shall become effective on January 1, 1936.

Executive Order No. 7323

Ex. Ord. No. 7323, Mar. 26, 1936, 1 F.R. 69, created the Committee of Industrial Analysis to complete the summary of the results and accomplishments of the National Industrial Recovery Administration and report thereon, which report was transmitted to the President on February 17, 1937.

National Emergency Council

National Emergency Council, abolished and functions transferred to Executive Office of President and to Office of Education in Federal Security Agency by Reorg. Plan No. II of 1939, §§ 201(a), 301, eff. July 1, 1939, 4 F.R. 2732, 53 Stat. 1434, 1435, set out in the Appendix to Title 5, Government Organization and Employees. See also sections 401 to 404 of Reorg. Plan No. II of 1939, for provisions relating to transfer of functions, records, property, personnel, and funds.

National Resources Committee

National Resources Committee, abolished and functions and personnel transferred to National Resources Planning Board in Executive Office of President, which Board was also directed to wind up affairs of the Committee, by Reorg. Plan No. I of 1939, §§ 4, 5, eff. July 1, 1939, 4 F.R. 2727, 2728, 53 Stat. 1423, 1424, set out in the Appendix to Title 5, Government Organization and Employees. See, also, sections 7 to 9 of 1939 Reorg. Plan for provisions relating to transfer of records, property, funds, and personnel.

§ 712a. Limitation of obligations for administrative expenses of certain agencies; limitation on life of certain agencies

(a) Notwithstanding any other provision of law, none of the establishments or agencies named in subsection (b) of this section shall, after June 30, 1937, incur any obligations for administrative expenses, except pursuant to an annual appropriation specifically therefor, nor shall any such establishment or agency continue to function after said date unless established by or pursuant to law: *Provided*, That nothing contained in this section shall be construed to extend the period during which any such establishment or agency heretofore has been authorized by law to function.

(b) 1. Federal Home Loan Bank Board; 2. Home Owners' Loan Corporation; 3. Federal Housing Administration; 4. Federal Surplus Commodities Corporation; 5. Export-Import Bank of the United States; 6. Second Export-Import Bank of Washington, District of Columbia; 7. Reconstruction Finance Corporation; 8. Electric Home and Farm Authority; 9. Commodity Credit Corporation; 10. Federal Emergency Administration of Public Works; 11. Federal Savings and Loan Insurance Corporation; 12. Reconstruction Finance Mortgage Company.

(June 22, 1936, ch. 689, § 7, 49 Stat. 1647; Oct. 4, 1961, Pub. L. 87-353, § 3(*l*), 75 Stat. 774; Mar. 13, 1968, Pub. L. 90-267, § 1(a), 82 Stat. 47.)

Amendments

1961—Subsec. (b). Pub. L. 87-353 struck out item 4. Federal Farm Mortgage Corporation and redesignated former items 5 to 13 as 4 to 12, respectively.

Transfers of Functions and Changes in Names

The Home Owners' Loan Corporation, the Federal Savings and Loan Insurance Corporation, and the Federal Home Loan Bank Board were consolidated into the National Housing Agency during World War II by Ex. Ord. No. 9070, Feb. 24, 1942. Subsequently, the Home Owners' Loan Corporation, the Federal Savings and Loan Insurance Corporation, and the Federal Home Loan Bank Board were consolidated into the Housing and Home Finance Agency by Reorg. Plan No. 3 of 1947, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954, which created the Home Loan Bank Board as a constituent agency thereof and transferred to such Board the functions of the Federal Savings and Loan Insurance Corporation. On Aug. 11, 1955, the Home Loan Bank Board was made an independent agency (including the Federal Savings and Loan Insurance Corporation) and its name was changed to the Federal Home Loan Bank Board. See section 1437(b) of Title 12, Banks and Banking. The Home Owners' Loan Corporation was abolished by act June 30, 1953, ch. 170, § 21, 67 Stat. 126.

The Federal Housing Administration was consolidated into the National Housing Agency during World War II by Ex. Ord. No. 9070, Feb. 24, 1942. The Federal Housing Administration was subsequently consolidated into the Housing and Home Finance Agency by Reorg. Plan No. 3 of 1947, eff. July 27, 1947, 12 F.R. 4981, 61 Stat. 954. All of the functions, powers, and duties of the Federal Housing Administration were thereafter transferred to the Secretary of Housing and Urban Development. See section 3534(a) of Title 42, The Public Health and Welfare.

The Federal Surplus Commodities Corporation, which was included in the Surplus Marketing Administration by Reorg. Plan No. III of 1940, § 5, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232, was consolidated into the Agricultural Marketing Administration by Ex. Ord. No. 9069, Feb. 23, 1942. The Agricultural Marketing Administration was consolidated into the Food Distribution Administration of the Department of Agriculture by Ex. Ord. No. 9280, Dec. 5, 1942. The Food Distribution Administration was consolidated into a War Food Administration in the Department of Agriculture by Ex. Ord. No. 9322, Mar. 26, 1943, 8 F.R. 3807, as amended by Ex. Ord. No. 9334, Apr. 19, 1943, 8 F.R. 5423. The War Food Administration was terminated and its functions transferred to the Secretary of Agriculture by Ex. Ord. No. 9577, June 29, 1945, 10 F.R. 8087. The functions of the Surplus Marketing Administration were transferred to the Secretary of Agriculture by Reorg. Plan No. 3 of 1946, § 501, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.

Export-Import Bank of Washington was set out as one of several agencies for which Federal Loan Administrator should supervise administration and be responsible for coordination of functions and activities by Reorg. Plan No. I of 1939, § 402, eff. July 1, 1939, 4 F.R. 2730, 53 Stat. 1429, set out in the Appendix to Title 5, Government Organization and Employees. The Bank was terminated by act July 31, 1945, ch. 341, § 10, 59 Stat. 529, and a new Export-Import Bank of Washington was created by such act, which is set out as chapter 6A (§635 et seq.) of Title 12, Banks and Banking. "Export-Import Bank of Washington" was changed to "Export-Import Bank of the United States" to conform to such change in name in Act July 31, 1945, provided for in section 1(a) of Pub. L. 90-267, Mar. 13, 1968, 82 Stat. 47.

The Second Export-Import Bank of Washington, D.C. was established under Ex. Ord. No. 6638, Mar. 9, 1934. Its commitments were transferred to the Export-Import Bank of Washington (see above) and it was abolished by Ex. Ord. No. 7365, May 7, 1936, 1 F.R. 372.

Federal Loan Agency's and Federal Loan Administrator's functions and duties relating to Reconstruction Finance Corporation, Reconstruction Finance Mortgage Company, Electric Home and Farm Authority and Export-Import Bank of Washington, and other agencies, transferred to Department of Commerce, during World War II, see Ex. Ord. No. 9071, Feb. 24, 1942, 7 F.R. 1531. By act Feb. 24, 1945, ch. 4, 59 Stat. 5, former sections 1801 to 1805 of Title 12, the Federal Loan Agency was reconstituted an independent establishment of the Federal Government, and was abolished and its property and functions transferred to the Reconstruction Finance Corporation by act June 30, 1947, ch. 166, title II, § 204, 61 Stat. 208. Section 6(a) of 1957 Reorg. Plan No. 1, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out as a note under section 601 of this title, abolished the Reconstruction Finance Corporation.

Electric Home and Farm Authority was set out as one of several agencies for which Federal Loan Administrator should supervise administration and be responsible for coordination of functions and activities, by Reorg. Plan No. I of 1939, § 402, eff. July 1, 1939, 4 F.R. 2730, 53 Stat. 1429, set out in the Appendix to Title 5, Government Organization and Employees.

Electric Home and Farm Authority, Inc., was authorized by Ex. Ord. No. 6514, Dec. 19, 1933. Existence continued until February 1, 1937, by act Mar. 31, 1936, ch. 163, § 1, 49 Stat. 1186; extended to "close of business on June 30, 1939" by act Jan. 26, 1937, ch. 6, § 2, 50 Stat. 5; to "June 30, 1941" by act Mar. 4, 1939, ch. 4, 53 Stat. 510 and to Jan. 22, 1947, by act June 10, 1941, ch. 190, § 2, 55 Stat. 248. Said Authority was dissolved on Oct. 13, 1942, by Ex. Ord. No. 9256, Oct. 13, 1942, 7 F.R. 8334, and for the purposes of liquidation and payment of liabilities all assets, funds, records, contracts, personnel, and property were transferred to the former Reconstruction Finance Corporation.

Commodity Credit Corporation, Federal Farm Mortgage Corporation, and Farm Credit Administration, and their functions and activities, together with their respective personnel, records, and property were transferred to Department of Agriculture by Reorg. Plan No. I of 1939, § 401, eff. July 1, 1939, 4 F.R. 2730, 53 Stat. 1429, set out in the Appendix to Title 5, Government Organization and Employees. Administration of program of Commodity Credit Corporation and functions of Federal Surplus Commodities Corporation were transferred to the Secretary of Agriculture by Reorg. Plan No. 3 of 1946, § 501, eff. July 16, 1946, 11 F.R. 7877, 60 Stat. 1100. See also notes under section 713 of this title.

The Federal Emergency Administration of Public Works, created by act June 16, 1933, ch. 90, title II, § 201, 48 Stat. 200, was transferred to the Federal Works Agency to be administered as the Public Works Administration by Reorg. Plan No. I of 1939, §§ 301 and 305, eff. July 1, 1939, 4 F.R. 2729, 2730, 53 Stat. 1426, 1428. The Federal Emergency Administration of Public Works was further continued to June 30, 1940, by Res. of June 21, 1938, ch. 554, title II, § 202, 52 Stat. 817. The act of June 16, 1933, ch. 90, title II, terminated June 30, 1943, by the provisions of act June 27, 1942, ch. 450, § 1, 56 Stat. 410. Ex. Ord. No. 9357, June 30, 1943, 8 F.R. 9041, transferred functions of the Public Works Administration to the office of the Federal Works Administrator.

For changes affecting other agencies enumerated in subsection (b) of this section, see Reorg. Plan No. I of 1939, §§ 301, 305, 401, 402, eff. July 1, 1939, 4 F.R. 2729, 2730, 53 Stat. 1426, 1428, 1429, and Reorg. Plan No. III of 1940, § 5, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232. Reorganization Plans I and III are set out in the Appendix to Title 5, Government Organization and Employees.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

Functions of the corporations of the Department of Agriculture, the boards of directors and officers of such corporations; the Advisory Board of the Commodity Credit Corporation; and the Farm Credit Administration or any agency, officer or entity of, under, or subject to the supervision of the Administration were excepted from the functions of officers, agencies and employees transferred to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

APPLICABILITY TO NATIONAL HOUSING AGENCY; TRANSFER OF FUNDS; REPORT TO CONGRESS

Act May 3, 1945, ch. 106, title I, § 1, 59 Stat. 122, provided in part: "Section 7 of the First Deficiency Appropriation Act, 1936 [this section], shall continue to apply to administrative expenses of and for the constituent units of the National Housing Agency mentioned in said section 7 [this section] and shall also apply to such expenses of said National Housing Agency in connection with the functions and purposes of said constituent units, and none of the funds made available by this Act [act May 3, 1945, ch. 106, title I, § 1, 59 Stat. 106] for such administrative expenses shall be obligated or expended unless and until an appropriate appropriation account shall have been established therefor pursuant to an appropriation warrant or a covering warrant, and all such expenditures shall be accounted for and audited in accordance with the Budget and Accounting Act, as amended [classified principally to chapter 1 of Title 31]: *Provided further,* That the Administrator may, with the approval of the President of the United States, transfer to this authorization or to an authorization of a constituent unit from funds available for administrative expenses of the constituent units or the Office of the Administrator such additional sums as represent a consolidation in the Office of the Administrator or in a constituent unit of any of the administrative functions of the National Housing Agency; but no such transfer of funds shall be made unless the consolidation will result in a reduction in manpower and a savings in administrative expenses, which savings shall not be used for administrative expenses but instead shall be returned to or remain in the funds from which administrative expenses are drawn under this authorization: *Provided further,* That a report of such transfers and the savings effected thereby shall be submitted to Congress in the annual budget."

Similar provisions were contained in acts June 26, 1943, ch. 145, title I, § 1, 57 Stat. 184; June 27, 1944, ch. 286, title I, § 1, 58 Stat. 375.

CROSS REFERENCES

Availability of deposits for purposes of Federal Home Loan Bank Board and Federal Home Loan Bank Administration as subject to this section, see section 1439a of Title 12, Banks and Banking.

§ 713. Omitted

CODIFICATION

Section, acts Jan. 31, 1935, ch. 2, § 7, 49 Stat. 4; Jan. 26, 1937, ch. 6, § 2(a), 50 Stat. 5; Mar. 4, 1939, ch. 5, § 1(a), 53 Stat. 510; Dec. 23, 1943, ch. 383, 57 Stat. 643, was omitted as terminated by its own terms on June 30, 1948. It related to the Commodity Credit Corporation, which was recreated as a Federal corporation by section 714 of this title.

Subsec. (a), continuing the Commodity Credit Corporation, a Delaware corporation, until the close of business on June 30, 1948, authorizing the Corporation to use all its assets (including capital and net earnings therefrom and all moneys allocated to or borrowed by it) in the exercise of its functions as a United States agency, including the making of loans on agricultural commodities, and requiring the Corporation to maintain complete and accurate books of account and to determine the procedures to be followed in the transaction of corporate business, was superseded by sections 714, 714b(a), (d), (*l*), and 714f of this title.

Initial proviso clause of subsec. (b), "That the Corporation shall continue to have the authority to make final and conclusive settlement and adjustment of any claims by or against the Corporation or the accounts of its fiscal officers" was superseded by section 714b(k) of this title.

Remainder of section, relating to audit of financial transactions of the Corporation, was superseded by sections 841 to 870 of Title 31, Money and Finance. See, particularly, sections 846, 850 and 851 of such title 31.

REPEALS

Act July 1, 1941, ch. 270, § 1, 55 Stat. 498, formerly classified to this section, was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 651.

Acts July 16, 1943, ch. 241, § 1, 57 Stat. 556; Feb. 28, 1944, ch. 71, § 1, 58 Stat. 105; Apr. 12, 1945, ch. 54, § 5, 59 Stat. 51; June 30, 1947, ch. 164, 61 Stat. 201, formerly classified to this section, were repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 652.

DISSOLUTION OF CORPORATION

The Secretary of Agriculture was authorized to dissolve the Delaware corporation under the authority of section 714*o* of this title.

TRANSFER OF ASSETS OF CORPORATION

The assets, funds, liabilities, etc., of the Delaware corporation were transferred to the newly created Commodity Credit Corporation under the authority of section 714n of this title.

SUBSIDY OPERATIONS

Act July 25, 1946, ch. 671, § 6, 60 Stat. 671, provided that the last paragraph of section 902(e) of Appendix to Title 50, War and National Defense, should not apply to operations of the Commodity Credit Corporation and the former Reconstruction Finance Corporation for the fiscal year ending June 30, 1947, and placed limitations on certain subsidy payments made during such fiscal year June 30, 1947.

Increase in Certain Subsidy Payments

Act July 31, 1945, ch. 322, Stat. 506, provided that subsidy payments with respect to livestock, wheat, and butter, shall be increased to certain amounts from time to time by the Secretary of Agriculture.

Allocation of Livestock and Poultry Feeds

Act July 25, 1946, ch. 671, § 15, 60 Stat. 677, provided that the Secretary of Agriculture should allocate livestock and poultry feeds through the Commodity Credit Corporation when an emergency condition arises with regard to such feeds.

Purchases of Wheat Prior to April 1, 1947

Act July 25, 1946, ch. 671, § 16, 60 Stat. 677, provided that the Commodity Credit Corporation shall offer to purchase the wheat of producers, subject to certain limitations, which wheat has been required to be sold pursuant to Government order and was delivered to a grain elevator prior to April 1, 1947.

§ 713a. Repealed. June 30, 1947, ch. 166, title II, § 206(p), 61 Stat. 208

Section, act Apr. 10, 1936, ch. 168, 49 Stat. 1191, authorized increase of capital stock of the Corporation by $97,000,000.

§§ 713a-1, 713a-2. Repealed. Pub. L. 87-155, § 1, Aug. 17, 1961, 75 Stat. 391

Section 713a-1, acts Mar. 8, 1938, ch. 44, § 1, 52 Stat. 107; July 1, 1941, ch. 270, § 2, 55 Stat. 498; Apr. 12, 1945, ch. 54, § 4, 59 Stat. 51; Mar. 20, 1954, ch. 102, § 1(b), 68 Stat. 30, related to the annual appraisal of assets of the Commodity Credit Corporation, and to the restoration of any capital impairment. See section 713a-11 of this title for provisions authorizing appropriations to reimburse the Commodity Credit Corporation for its net realized yearly losses.

Section 713a-2, act Mar. 8, 1938, ch. 44, § 2, 52 Stat. 107, related to the deposit in the Treasury of any capital excess of the Commodity Credit Corporation. See section 713a-12 of this title for provisions requiring any net realized gain for the year by the Commodity Credit Corporation to be deposited in the Treasury.

§ 713a-3. Omitted

Codification

Section, act Mar. 8, 1938, ch. 44, § 3, 52 Stat. 107, referred to stock of the Delaware corporation and has been omitted as obsolete.

§ 713a-4. Obligations of Commodity Credit Corporation; issuance; sale; purchase; redemption; etc.

With the approval of the Secretary of the Treasury, the Commodity Credit Corporation is authorized to issue and have outstanding at any one time, bonds, notes, debentures, and other similar obligations in an aggregate amount not exceeding $14,500,000,000. Such obligations shall be in such forms and denominations, shall have such maturities, shall bear such rates of interest, shall be subject to such terms and conditions, and shall be issued in such manner and sold at such prices as may be prescribed by the Commodity Credit Corporation, with the approval of the Secretary of the Treasury. Such obligations shall be fully and unconditionally guaranteed both as to interest and principal by the United States, and such guaranty shall be expressed on the face thereof, and such obligations shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. In the event that the Commodity Credit Corporation shall be unable to pay upon demand, when due, the principal of, or interest on, such obligations, the Secretary of the Treasury shall pay to the holder the amount thereof which is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such obligations. The Secretary of the Treasury, in his discretion, is authorized to purchase any obligations of the Commodity Credit Corporation issued hereunder, and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds from the sale of any securities hereafter issued under the Second Liberty Bond Act, as amended and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of the Commodity Credit Corporation's obligations hereunder. The Secretary of the Treasury may at any time sell any of the obligations of the Commodity Credit Corporation acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of the obligations of the Commodity Credit Corporation shall be treated as public-debt transactions of the United States. No such obligations shall be issued in excess of the assets of the Commodity Credit Corporation, including the assets to be obtained from the proceeds of such obligations, but a failure to comply with this provision shall not invalidate the obligations or the guaranty of the same: *Provided,* That this sentence shall not limit the authority of the Corporation to issue obligations for the purpose of carrying out its annual budget programs submitted to and approved by the Congress pursuant to the Government Corporation Control Act [31 U.S.C. 841 et seq.]. The Commodity Credit Corporation shall have power to purchase such obligations in the open market at any time and at any price.

(Mar. 8, 1938, ch. 44, § 4, 52 Stat. 108; Mar. 4, 1939, ch. 5, § 1(d), 53 Stat. 510; Aug. 9, 1940, ch. 649, 54 Stat. 782; July 1, 1941, ch. 270, § 3, 55 Stat. 498; July 16, 1943, ch. 241, § 2, 57 Stat. 566; Apr. 12, 1945, ch. 54, § 1, 59 Stat. 50; Oct. 31, 1949, ch. 792, title IV, § 410, 63 Stat. 1057; June 28, 1950, ch. 381, § 1, 64 Stat. 261; Mar. 20, 1954, ch. 102, § 1(a), 68 Stat. 30; Aug. 31, 1954, ch. 1172, § 1, 68 Stat. 1047; Aug. 11, 1955, ch. 782, § 1, 69 Stat. 634; Aug. 1, 1956, ch. 815, § 1(b), 70 Stat. 783.)

References in Text

The Second Liberty Bond Act, as amended, referred to in text, is act Sept. 24, 1917, ch. 56, 40 Stat. 288. For classification of this Act to the Code, see References in Text note set out under section 774 of Title 31, Money and Finance, and Tables volume.

The Government Corporation Control Act, referred to in text, is act Dec. 6, 1945, ch. 557, 59 Stat. 597, which is classified generally to chapter 14, (§ 841 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 841 of Title 31 and Tables volume.

AMENDMENTS

1956—Act Aug. 1, 1956, substituted “$14,500,000,000” for “$12,000,000,000”.

1955—Act Aug. 11, 1955, substituted “$12,000,000,000 for “$10,000,000,000”.

1954—Act Aug. 31, 1954, substituted “$10,000,000,000” for “$8,500,000,000”.

Act Mar. 20, 1954, substituted “$8,500,000,000” for “$6,750,000,000”.

1950—Act June 28, 1950, substituted “$6,750,000,000” for “$4,750,000,000”.

1949—Act Oct. 31, 1949, added proviso in next to last sentence.

1945—Act Apr. 12, 1945, substituted “$4,750,000,000” for “$3,000,000,000”.

1943—Act July 16, 1943, substituted “$3,000,000,000” for “$2,650,000,000”.

1941—Act July 1, 1941, substituted “$2,650,000,000” for “$1,400,000,000”.

1940—Act Aug. 9, 1940, substituted “$1,400,000,000 for “$900,000,000”.

1939—Act Mar. 4, 1939, substituted $900,000,000” for “$500,000,000”.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

DISCHARGE OF INDEBTEDNESS

Section 101 of act May 26, 1947, ch. 82, title I, 61 Stat. 109, provided in part: “On the date of enactment of this Act [May 26, 1947] the Secretary of the Treasury is hereby authorized and directed to discharge $641,832,080.64 of the indebtedness of the Commodity Credit Corporation to the Secretary of the Treasury by canceling notes in such amount issued by the Corporation to the Secretary of the Treasury pursuant to section 4 of the Act of March 8, 1938, as amended [this section].”

CROSS REFERENCES

Provisions of section as applicable to federally chartered corporation, see section 714d of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 713a-5, 714e of this title; title 7 section 1784.

§ 713a-5. Exemption of Commodity Credit Corporation and its obligations from taxation

Bonds, notes, debentures, and other similar obligations issued by the Commodity Credit Corporation under the provisions of sections 713a-1 to 713a-5 of this title shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation (except surtaxes, estate, inheritance, and gift taxes). The Commodity Credit Corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the Commodity Credit Corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(Mar. 8, 1938, ch. 44, § 5, 52 Stat. 108).

REFERENCES IN TEXT

Sections 713a-1 to 713a-5, referred to in text, was, in the original, “this Act”. Section 1 and 2 of that act, set out as sections 713a-1 and 713a-2 of this title, have been repealed and section 3 of that act, set out as section 713a-3 of this title, has been omitted, as obsolete.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

CROSS REFERENCES

Provisions of section as applicable to federally chartered corporation, see section 714d of this title.

United States obligations and evidences of ownership issued after March 27, 1942, as subject to Federal taxation, see section 742a of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 1784.

§ 713a-6. Sale of surplus agricultural commodities to foreign governments

Notwithstanding any other provision of law, the Commodity Credit Corporation, with the approval of the President, is authorized to sell surplus agricultural commodities, acquired by such Corporation through its loan operations, to foreign governments on the condition that, except for rotation to prevent deterioration, such commodities shall be held in reserve by such governments for a period of not less than five years from the date of acquisition, and shall not be disposed of unless a war or war emergency results in a serious interruption of normal supplies of such commodities: *Provided*, That under this section no concession below the prevailing world market price for the unrestricted use of such commodities, as determined by the Secretary of Agriculture, shall be granted, in consideration of the obligation assumed by such governments to hold such commodities in reserve as required hereinbefore, in excess of a maximum amount equal to the average carrying charges, as estimated by the Secretary of Agriculture, that would be incurred if such commodities should be held for an additional eighteen months' period by the Commodity Credit Corporation. In determining specific cotton to be sold under this section, the determination shall be made by sampling and selection at the place where the cotton is stored on the date of signing any sales agreement or contract under this section, and no cotton shall be sold under any such sales agreement or contract which, after such date, is transported to any other place and there sampled and selected: *Provided further*, That in case of a sale, settlement must be made within sixty days after delivery and not more than five hundred thousand bales of cotton shall be sold upon the terms and conditions provided in this section.

(Aug. 11, 1939, ch. 701, 53 Stat. 1418.)

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

CROSS REFERENCES

Provisions of section as applicable to federally chartered corporation, see section 714d of this title.

§ 713a-7. Exchange of surplus agricultural commodities for reserve stocks of strategic materials

Notwithstanding any other provision of law, whenever the President, by and with the advice and consent of the Senate, has concluded a treaty involving the exchange of surplus agricultural commodities produced in the United States which are held under loans made or made available by the Commodity Credit Corporation for stocks of strategic and critical materials produced abroad, the Commodity Credit Corporation is authorized, upon terms and conditions prescribed by the Secretary of Agriculture, to accept such strategic and critical materials in exchange for such surplus agricultural commodities; and for the purpose of such exchange the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Interior acting jointly through the agency of the Munitions Board shall determine which materials are strategic and critical and the quantity and quality of such materials. In order to carry out the provisions of this section, the Commodity Credit Corporation is authorized, upon terms and conditions prescribed by the Secretary of Agriculture, to procure, convey, transport, handle, store, maintain, or rotate such surplus agricultural commodities, and such reserve stocks of strategic and critical materials, as may be necessary to accomplish the purposes of this section.

The Commodity Credit Corporation is authorized and directed to transfer to warehouses in or near cotton manufacturing centers in New England not to exceed three hundred thousand bales of cotton, to which it now has title or may hereafter acquire title, having regard for the grades and staples customarily required by manufacturers in that area: *Provided*, That all necessary costs in connection with such transfer will not result in additional net cost to the Corporation.

In determining specific cotton to be exchanged under this section, the determination shall be made by sampling and selection at the place where the cotton is stored on the date of ratification of a treaty providing for such exchange, and no cotton shall be exchanged under such treaty which, after such date, is transported to another place and there sampled and selected. Such reserve stocks of strategic and critical materials shall be stored on military or naval reservations or in other locations approved by the Secretary of the Army and the Secretary of the Navy. The Commodity Credit Corporation is authorized to transfer such reserve stocks of strategic and critical materials, upon such terms and conditions as the Secretary of Agriculture shall approve, to any other governmental agency. Such reserve stocks or strategic and critical materials shall be made available or disposed of by the Commodity Credit Corporation or other governmental agency only upon order of the President in accordance with the terms of the applicable treaty; when necessary to prevent deterioration, the Commodity Credit Corporation or other governmental agency is authorized to replace those quantities of the reserve stocks of such strategic and critical materials subject to deterioration with equivalent quantities of the same materials. The funds now or hereafter made available to the Commodity Credit Corporation are made available to carry out the purposes of this section. There is authorized to be appropriated such additional sums as may be required to carry out the provisions of this section. All funds for carrying out the provisions of this section shall be available for allotment to bureaus and offices of the Department of Agriculture, and for transfer to such other agencies of the Federal Government as the Secretary of Agriculture may request to cooperate or assist in carrying out the provisions of this section.

(Aug. 11, 1939, ch. 690, 53 Stat. 1407; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011 to 3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

TRANSFER OF FUNCTIONS

The Munitions Board was abolished by section 2 of Reorg. Plan No. 6 of 1953, 18 F.R. 3743, 67 Stat. 638, set out in the Appendix to Title 5, Government Organization and Employees, and all functions of the Munitions Board were transferred to the Secretary of Defense by section 1 of Reorg. Plan No. 6 of 1953.

The Army and Navy Munitions Board ceased to exist when the Chairman of the Board of Munitions took office and the records and personnel of the Army and Navy Munitions Board were transferred to the Munitions Board by act July 26, 1947, ch. 343, title II, § 213, 61 Stat. 505.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

CROSS REFERENCES

Provisions of section as applicable to federally chartered corporation, see section 714d of this title.

§ 713a-8. Omitted

CODIFICATION

Section, acts July 1, 1941, ch. 270, § 4, 55 Stat. 498; Oct. 2, 1942, ch. 578, § 9(a), 56 Stat. 768; Feb. 28, 1944, ch. 71, § 2, 58 Stat. 105; Ex. Ord. No. 9577, June 30, 1945, 10 F.R. 8087, which related to operations to cover the expansion of production of nonbasic agricultural commodities and to fulfillment of commitments to producers during the existing emergency, was omitted in light of the termination of hostilities declared by Proc. No. 2714 of Dec. 31, 1946 and Joint Res. July

25, 1947, ch. 327, § 3, 61 Stat. 451, providing that July 25, 1947, be deemed the date of termination of any state of war or national emergency theretofore declared or proclaimed.

§ 713a-9. Reimbursement of corporation from funds of government agencies for services, losses, operating costs, or commodities purchased

Full reimbursement shall be made to the Commodity Credit Corporation for services performed, losses sustained, operating costs incurred, or commodities purchased or delivered to or on behalf of the Lend-Lease Administration, the Army or Navy, the Board of Economic Warfare, the Reconstruction Finance Corporation, or any other Government agency, from the appropriate funds of these agencies.

(July 16, 1943, ch. 241, § 4, 57 Stat. 566.)

TRANSFER OF FUNCTIONS

The Lend-Lease Administration and the Board of Economic Warfare, referred to in the text, were consolidated with the Foreign Economic Administration by Ex. Ord. No. 9380, Sept. 25, 1943. The Foreign Economic Administration was subsequently terminated and the functions of the Lend-Lease Administration and the Board of Economic Warfare were transferred to the Department of State pursuant to Ex. Ord. No. 9630, Sept. 27, 1945, 10 F.R. 12245, as amended by Ex. Ord. No. 9730, May 27, 1946, 11 F.R. 5777.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out as a note under section 601 of this title, abolished the Reconstruction Finance Corporation.

CROSS REFERENCES

International Wheat Agreement, section not applicable to wheat supplied under, see section 1641 of Title 7, Agriculture.

Provisions of section as applicable to federally chartered corporation, see section 714d of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 1641.

§ 713a-10. Authority to make expenditures; reserve nonadministrative expenses; cancellation of notes

The Commodity Credit Corporation is authorized to make such expenditures, within the limits of funds and borrowing authority available to such corporation and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 849 of title 31, as may be necessary to carry out the programs set forth in the budget for the fiscal year 1976, and for the period July 1, 1976, through September 30, 1976, for such corporation, except as hereinafter provided:

For the fiscal year 1977, not to exceed $41,220,000 shall be available for administrative expenses of the Commodity Credit Corporation: *Provided,* That $3,133,000 and such other sums as are necessary of this authorization shall be available to support the position of Sales Manager who shall work to expand and strengthen sales of U.S. commodities in world markets (including those of the Corporation and those funded by Public Law 480) pursuant to existing authority (including that contained in the Corporation's charter and Public Law 480), and that such funds shall be used by such Sales Manager to form an agency to carry out the above activities. Such Sales Manager shall report directly to the Board of Directors of the Corporation of which the Secretary of Agriculture is a member. Such Sales Manager shall obtain, assimilate, analyze all available information on developments related to private sales, as well as those funded by the Corporation and Public Law 480, including grade and quality as sold and as delivered and shall submit quarterly reports to the appropriate committees of Congress concerning such developments: *Provided further,* That not less than 7 per centum of this authorization shall be placed in reserve to be apportioned pursuant to section 665 of title 31, for use only in such amounts and at such times as may become necessary to carry out program operations: *Provided further,* That all necessary expenses (including legal and special services performed on a contract or fee basis, but not including other personal services) in connection with the acquisition, operation, maintenance, improvement, or disposition of any real or personal property belonging to the Corporation or in which it has an interest, including expenses of collections of pledged collateral, shall be considered as nonadministrative expenses for the purposes hereof.

For the period July 1, 1976, through September 30, 1976, not to exceed $9,850,000 shall be available including a contingency reserve of not less than 7 percent: *Provided,* That $250,000 and such other sums as are necessary of this authorization shall be available to support the position of Sales Manager who shall work to expand and strengthen sales of U.S. commodities in world markets (including those of the Corporation and those funded by Public Law 480) pursuant to existing authority (including that contained in the Corporation's charter and Public Law 480), and that such funds shall be used by such Sales Manager to form an agency to carry out the above activities. Such Sales Manager shall report directly to the Board of Directors of the Corporation of which the Secretary of Agriculture is a member. Such Sales Manager shall obtain, assimilate, analyze all available information on developments related to private sales, as well as those funded by the Corporation and Public Law 480, including grade and quantity as sold and as delivered and shall submit quarterly reports to the appropriate committees of Congress concerning such developments.

(Pub. L. 94-351, title I, § 101, July 12, 1976, 90 Stat. 858.)

REFERENCES IN TEXT

Public Law 480, referred to in text, is Public Law 480 of the 83d Congress, popularly known as the Agricultural Trade Development and Assistance Act of 1954 (approved July 10, 1954, ch. 469, 68 Stat. 454), which is classified generally to chapter 41 (§ 1691 et seq.) of title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of Title 7 and Tables volume.

Similar Provisions

Section is from the Agriculture-Related Agencies Appropriation Act, 1977. Similar provisions were contained in the following prior appropriation acts:

Oct. 21, 1975, Pub. L. 94-122, title I, § 101, 89 Stat. 652, 653.
Dec. 31, 1974, Pub. L. 93-563, title I, § 101, 88 Stat. 1830.
Oct. 24, 1973, Pub. L. 93-135, title I, § 101, 87 Stat. 477.
Aug. 22, 1972, Pub. L. 92-399, title I, § 101, 86 Stat. 600.
Aug. 10, 1971, Pub. L. 92-73, title I, § 101, 85 Stat. 190.
Dec. 31, 1970, Pub. L. 91-566, title III, § 301, 84 Stat. 1494, 1495.
Nov. 26, 1969, Pub. L. 91-127, title III, § 301, 83 Stat. 258.
Aug. 8, 1968, Pub. L. 90-463, title III, § 301, 82 Stat. 651.
Oct. 14, 1967, Pub. L. 90-113, title III, § 301, 81 Stat. 332.
Sept. 7, 1966, Pub. L. 89-556, title III, § 301, 80 Stat. 701.
Nov. 2, 1965, Pub. L. 89-316, title III, § 301, 79 Stat. 1177.
Sept. 2, 1964, Pub. L. 88-573, title III, § 301, 78 Stat. 874.
Dec. 30, 1963, Pub. L. 88-250, title III, § 301, 77 Stat. 831.
Oct. 24, 1962, Pub. L. 87-879, title III, § 301, 76 Stat. 1213.
July 26, 1961, Pub. L. 87-112, title III, § 301, 75 Stat. 238, 239.
June 29, 1960, Pub. L. 86-532, title II, § 201, 74 Stat. 242.
April 13, 1960, Pub. L. 86-424, § 101, 74 Stat. 42.
July 8, 1959, Pub. L. 86-80, title II, § 201, 73 Stat. 177.
May 20, 1959, Pub. L. 86-30, title I, § 101, 73 Stat. 36.
June 13, 1958, Pub. L. 85-459, title II, § 201, 72 Stat. 198.
Aug. 2, 1957, Pub. L. 85-118, title II, § 201, 71 Stat. 338.
June 4, 1956, ch. 355, title II, § 201, 70 Stat. 238.
May 19, 1956, ch. 313, Ch. I, § 101, 70 Stat. 162.
May 23, 1955, ch. 43 title II, § 201, 69 Stat. 60, 61.
Jan. 25, 1955, ch. 3, Ch. II, § 201, 69 Stat. 5.
June 29, 1954, ch. 409, title II, § 201, 68 Stat. 317.
July 28, 1953, ch. 251, title II, § 201, 67 Stat. 222.
July 5, 1952, ch. 574, title II, § 201, 66 Stat. 353.
Aug. 31, 1951, ch. 374, title III, § 301, 65 Stat. 244.
Sept. 6, 1950, ch. 896, Ch. VI, title II, § 201, 64 Stat. 677.
June 29, 1949, ch. 280, title II, § 201, 63 Stat. 346.
July 19, 1948, ch. 543, title II, § 202, 62 Stat. 531.
July 30, 1947, ch. 356, title II, § 202, 61 Stat. 550.

Cross References

Provisions of section as applicable to federally chartered corporation, see section 714d of this title.

§ 713a-11. Annual appropriations to reimburse Commodity Credit Corporation for net realized loss

There is authorized to be appropriated annually for each fiscal year, commencing with the fiscal year ending June 30, 1961, out of any money in the Treasury not otherwise appropriated, an amount sufficient to reimburse Commodity Credit Corporation for its net realized loss incurred during such fiscal year, as reflected in its accounts and shown in its report of its financial condition as of the close of such fiscal year. Reimbursement of net realized loss shall be with appropriated funds, as provided herein, rather than through the cancellation of notes.

(Pub. L. 87-155, § 2, Aug. 17, 1961, 75 Stat. 391.)

§ 713a-11a. Interest prohibited when reimbursing Corporation for net realized losses

After September 30, 1964, the portion of borrowings from Treasury equal to the unreimbursed realized losses recorded on the books of the Commodity Credit Corporation after September 30 of the fiscal year in which such losses are realized, shall not bear interest and interest shall not be accrued or paid thereon.

(Pub. L. 89-316, title III, § 301, Nov. 2, 1965, 84 Stat. 1178; Pub. L. 94-273, § 2(6), Apr. 21, 1976, 90 Stat. 375.)

Amendments

1976—Pub. L. 94-273 substituted "September" for "June".

Fiscal Year Transition Period of July 1, 1976, Through September 30, 1976; Applicability and Construction

Pub. L. 94-274, title II, § 203, Apr. 21, 1976, 90 Stat. 392, provided that: "For the purposes of the paragraph captioned 'Commodity Credit Corporation', 'Reimbursement for Net Realized Losses' of title III of the Department of Agriculture and Related Agencies Appropriation Act, 1966 (15 U.S.C. 713a-11a) [this section], the period of July 1, 1976, through September 30, 1976, shall be considered a fiscal year and the words 'June 30 of the fiscal year' shall be construed to mean September 30, 1976, for that period."

§ 713a-12. Deposit of net realized gain of Commodity Credit Corporation in Treasury

In the event the accounts of the Commodity Credit Corporation reflect a net realized gain for any such fiscal year, the amount of such net realized gain shall be deposited in the Treasury by the Commodity Credit Corporation and shall be credited to miscellaneous receipts.

(Pub. L. 87-155, § 3, Aug. 17, 1961, 75 Stat. 391.)

§ 713a-13. Policies and procedures for minimum acquisition of stocks by Commodity Credit Corporation, encouragement of marketing through private trade channels and procurement of maximum retruns in marketplace for producers and Corporation

Congress hereby reconfirms its long-standing policy of favoring the use by governmental agencies of the usual and customary channels, facilities, and arrangements of trade and commerce, and directs the Secretary of Agriculture and the Commodity Credit Corporation to the maximum extent practicable to adopt policies and procedures designed to minimize the acquisition of stocks by the Commodity Credit Corporation, to encourage orderly marketing of farm commodities through private competitive trade channels, both cooperative and noncooperative, and to obtain maximum returns in the marketplace for producers and for the Commodity Credit Corporation.

(Pub. L. 87-703, title IV, § 402, Sept. 27, 1962, 76 Stat. 632.)

§ 713b. Repealed. July 31, 1945, ch. 341, § 10, 59 Stat. 529

Section, acts Jan. 31, 1935, ch. 2, § 9, 49 Stat. 4; Jan. 26, 1937, ch. 6, § 2(a), 50 Stat. 5; Mar. 4, 1939, ch. 5, § 1 (b), (c), 53 Stat. 510; Mar. 2, 1940, ch. 34, 54 Stat. 38; Sept. 26, 1940, ch. 734, § 3, 54 Stat. 962, relating to the Export-Import Bank of Washington, its continuation of existence, and its powers, is now covered by chapter 6A (§ 635 et seq.) of Title 12, Banks and Banking.

Section was also repealed by act June 30, 1947, ch. 166, title II, § 206(m), 61 Stat. 208.

DISSOLUTION OF SECOND EXPORT-IMPORT BANK OF WASHINGTON, D.C.

Ex. Ord. No. 7365, May 7, 1936, 1 F.R. 372, dissolved said Bank on June 30, 1936, and provided all remaining funds should be covered into the United States Treasury as miscellaneous receipts, and all records transferred to the Export-Import Bank of Washington.

§ 713c. Federal Surplus Commodities Corporation; continuance of existence; purchase and distribution of surplus agricultural commodities

In carrying out the provisions of clause (2) of section 612c of title 7, the Secretary of Agriculture may transfer to the Federal Surplus Commodities Corporation, which Corporation is continued, until June 30, 1945, as an agency of the United States under the direction of the Secretary of Agriculture, such funds, appropriated by said section, as may be necessary for the purpose of effectuating clause (2) of said section: *Provided*, That such transferred funds, together with other funds of the Corporation, may be used for purchasing, exchanging, processing, distributing, disposing, transporting, storing, and handling of agricultural commodities and products thereof and inspection costs, commissions, and other incidental costs and expenses, without regard to the provisions of existing law governing the expenditure of public funds and for administrative expenses, including rent, printing and binding, and the employment of persons and means, in the District of Columbia and elsewhere, such employment of persons to be in accordance with the provisions of law applicable to the employment of persons by the Agricultural Adjustment Administration. In carrying out clause (2) of said section, the funds appropriated by said section may be used for the purchase, without regard to the provisions of existing law governing the expenditure of public funds, of agricultural commodities and products thereof, and such commodities, as well as agricultural commodities and products thereof purchased under the preceding paragraph of this section, may be donated for relief purposes and for use in nonprofit summer camps for children.

(June 28, 1937, ch. 385, 50 Stat. 323; Feb. 16, 1938, ch. 30, title II, § 204, 52 Stat. 38; June 27, 1942, ch. 454, 56 Stat. 461; July 2, 1958, Pub. L. 85-483, § 2, 72 Stat. 287.)

AMENDMENTS

1958—Pub. L. 85-483 permitted donation of commodities for use in nonprofit summer camps for children.

1942—Act June 27, 1942, provided for the continuance of the Corporation from June 30, 1942, to June 30, 1945. It read as follows: "The Federal Surplus Commodities Corporation is hereby continued as an agency of the United States, under the direction of the Secretary of Agriculture, until June 30, 1945."

TRANSFER OF FUNCTIONS

For transfer of functions of the Federal Surplus Commodities Corporation, see Transfer of Functions note set out under section 712a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 1755.

§ 713c-1. Annual report to Congress by Federal Surplus Commodities Corporation

The Federal Surplus Commodities Corporation shall submit to Congress on the first day of each regular session an annual report setting forth a statement of the activities, receipts, and expenditures of the Corporation during the previous year.

(Feb. 16, 1938, ch. 30, title II, § 204, 52 Stat. 38.)

CODIFICATION

Section was previously classified to section 1293 of Title 7, Agriculture.

TRANSFER OF FUNCTIONS

For transfer of functions of the Federal Surplus Commodities Corporation, see Transfer of Functions note set out under section 712a of this title.

§ 713c-2. Purchase and distribution of surplus fishery products

Any part of the funds not to exceed $1,500,000 per year, created under and to carry out the provisions of section 612c of title 7, may also be used by the Secretary of Agriculture for the purpose of diverting surplus fishery products (including fish, shellfish, mollusks, and crustacea) from the normal channels of trade and commerce by acquiring them and providing for their distribution through Federal, State, and private relief channels: *Provided*, That none of the funds made available to the Secretary of Agriculture under this section and section 713c-3 of this title shall be used to purchase any of the commodities designated in this section and section 713c-3 of this title which may have been produced in any foreign country. The provisions of law relating to the acquisition of materials or supplies for the United States shall not apply to the acquisition of commodities under this section and section 713c-3 of this title.

(Aug. 11, 1939, ch. 696, § 1, 53 Stat. 1411; 1940 Reorg. Plan No. III, § 5, eff. June 30, 1940, 5 F.R. 2108, 54 Stat. 1232; 1946 Reorg. Plan No. 3, § 501, eff. July 16, 1946, 11 F.R. 7877, 60 Stat. 1100.)

CODIFICATION

The first part of this section originally read: "Any part of the funds not to exceed $1,500,000 per year, transferred by the Secretary of Agriculture to the Federal Surplus Commodities Corporation created under and to carry out the provisions of section 612c of title 7 may also be used by such Corporation", etc., and the reference in the proviso to the Secretary of Agriculture originally read: "Federal Surplus Commodities Corporation". See Transfer of Functions note below.

TRANSFER OF FUNCTIONS

All functions of all officers, agencies and employees of the Department of Agriculture were transferred, with certain exceptions, to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

For transfer of functions of the Federal Surplus Commodities Corporation, see Transfer of Functions note set out under section 712a of this title.

SIMILAR PROVISIONS

Earlier provisions on this subject were contained in act Mar. 5, 1937, ch. 29, 50 Stat. 27, and in Joint Res. Apr. 12, 1937, ch. 73, 50 Stat. 61. The former forbade acquisition of commodities thereunder after 90 days after its enactment, but permitted distribution of commodities after such period. The latter made funds available to be used in accordance with the provisions of the former.

Joint Res. Apr. 12, 1937, ch. 73, 50 Stat. 61, provided as follows: "That not to exceed $1,000,000 of the funds available to the Federal Surplus Commodities Corporation may be used by such Corporation for the purpose of diverting surplus fish (including shellfish) and the products thereof from the normal channels of trade and commerce by the acquisition and distribution thereof in accordance with the provisions of the Act entitled 'An Act to authorize the purchase and distribution of products of the fishing industry', approved March 5, 1937."

Act Mar. 5, 1937, ch. 29, 50 Stat. 27, provided as follows: "That there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $2,000,000 for the purpose of enabling the Federal Surplus Commodities Corporation to divert surplus fish (including shellfish) and the products thereof from the normal channels of trade and commerce by acquiring them and providing for their distribution through Federal, State, and private relief agencies. No commodities shall be acquired under this Act after ninety days after the date of its enactment: *Provided, however,* That distribution thereof may extend beyond said period. The provisions of law relating to the acquisition of materials or supplies for the United States shall not apply to the acquisition of commodities under this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 713c-3 of this title.

§ 713c-3. Promotion of the free flow of domestically produced fishery products

(a) Transfer of funds

The Secretary of Agriculture shall transfer to the Secretary of Commerce each fiscal year, beginning with the fiscal year commencing July 1, 1954, and ending on June 30, 1957, from moneys made available to carry out the provisions of section 612c of title 7, an amount equal to 30 per centum of the gross receipts from duties collected under the customs laws on fishery products (including fish, shellfish, mollusks, crustacea, aquatic plants and animals, and any products thereof, including processed and manufactured products), which shall be maintained in a separate fund and used by the Secretary of Commerce (1) to promote the free flow of domestically produced fishery products in commerce by conducting a fishery educational service and fishery technological, biological and related research programs, the moneys so transferred to be also available for the purchase or other acquisition, construction, equipment, operation, and maintenance of vessels or other facilities necessary for conducting research as provided for in this section, and (2) to develop and increase markets for fishery products of domestic origin and (3) to conduct any biological, technological, or other research pertaining to American fisheries.

(b) Transfer of vessels or equipment by agencies

For the purposes of this section, any agency of the United States, or any corporation wholly owned by the United States, is authorized to transfer, without reimbursement or transfer of funds, any vessels or equipment excess to its needs required by the Secretary of Commerce for the activities, studies, and research authorized herein.

(c) Cooperation by Secretary of Commerce with other agencies, etc.; advisory committee

In carrying out the purposes and objectives of this section, the Secretary of Commerce is directed as far as practicable to cooperate with other appropriate agencies of the Federal Government, with State or local governmental agencies, private agencies, organizations, or individuals, having jurisdiction over or an interest in fish or fishery commodities and he is authorized to appoint an advisory committee of the American fisheries industry to advise him in the formulation of policy, rules and regulations pertaining to requests for assistance, and other matters.

(d) Retransfer of funds for purposes of section 713c-2

The Secretary of Commerce is further authorized to retransfer any of the funds not to exceed $1,500,000 to be made available under this section to the Secretary of Agriculture to be used for the purposes specified in section 713c-2 of this title, and only such funds as are thus transferred shall be used for the purposes specified in section 713c-2 of this title with respect to domestically produced fishery products.

(e) Availability of funds

The separate fund created for the use of the Secretary of Commerce under subsection (a) of this section and the annual accruals thereto shall be available for each year hereafter until expended by the Secretary.

(Aug. 11, 1939, ch. 696, § 2, 53 Stat. 1412; July 1, 1954, ch. 447, 68 Stat. 376; Aug. 8, 1956, ch. 1036, § 12(b), 70 Stat. 1124; Nov. 8, 1965, Pub. L. 89-348, § 1(13), 79 Stat. 1311; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090.)

AMENDMENTS

1965—Subsec. (f). Pub. L. 89-348 repealed subsec. (f) which required an annual report to the appropriate committees of Congress on the use of the separate fund.

1956—Subsec. (e). Act Aug. 8, 1956, eliminated provisions which limited expenditures to not more than $3,000,000 in any fiscal year, restricted the balance of the fund to not more than $5,000,000 at the end of any fiscal year, and required the Secretary of the Interior to retransfer funds in excess of the $5,000,000 to the Secretary of Agriculture.

1954—Act July 1, 1954, amended section generally further to encourage the distribution of fishery products.

TRANSFER OF FUNCTIONS

All functions of all officers, agencies and employees of the Department of Agriculture were transferred, with certain exceptions, to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

Transfer of functions to Secretary of Commerce from Secretary of the Interior in view of: the creation of the National Oceanic and Atmospheric Administration in the Department of Commerce and the Office of Administrator of such Administration; the abolition of the Bureau of Commercial Fisheries in the Interior

Department and the Office of Director of such Bureau; transfers of functions, including functions formerly vested by law in the Secretary of the Interior or the Interior Department which were administered through the Bureau of Commercial Fisheries or were primarily related to such Bureau, exclusive of certain enumerated functions with respect to Great Lakes fishery research, Missouri River Reservoir research, Gulf Breeze Biological Laboratory, and Trans-Alaska pipeline investigations; and transfer of marine sport fish program of Bureau of Sport Fisheries and Wildlife by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees.

CONTINUATION OF AUTHORIZATION FOR TRANSFER OF FUNDS FOR FISCAL YEAR TRANSITION PERIOD OF JULY 1, 1976, THROUGH SEPTEMBER 30, 1976

Pub. L. 94-274, title I, § 122, Apr. 21, 1976, 90 Stat. 390, provided that: "For the purposes of section 2(a) of the Act of August 11, 1939 (53 Stat. 1412), as amended (15 U.S.C. 713c-3) [subsec. (a) of this section] the term 'fiscal year' includes the period of July 1, 1976, through September 30, 1976, and the amount to be transferred to the Secretary of Commerce pursuant to that section and for that period is 7.5 per centum of the gross receipts collected under the customs laws on fishery products during calendar year 1975."

CONTINUATION OF AUTHORIZATION FOR TRANSFER OF FUNDS

Section 12(a) of act Aug. 8, 1956, provided that: "The authorization for the transfer of certain funds from the Secretary of Agriculture to the Secretary of the Interior and their maintenance in a separate fund as contained in section 2(a) of the Act of August 11, 1939, as amended July 1, 1954 (68 Stat. 376), [subsection (a) of this section], shall be continued for the year ending June 30, 1957, and each year thereafter."

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law, see section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 713c-2 of this title.

SUBCHAPTER II—COMMODITY CREDIT CORPORATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 7 sections 1429, 2250a.

§ 714. Creation and purpose of Corporation

For the purpose of stabilizing, supporting, and protecting farm income and prices, of assisting in the maintenance of balanced and adequate supplies of agricultural commodities, products thereof, foods, feeds, and fibers (hereinafter collectively referred to as "agricultural commodities"), and of facilitating the orderly distribution of agricultural commodities, there is created a body corporate to be known as Commodity Credit Corporation (hereinafter referred to as the "Corporation"), which shall be an agency and instrumentality of the United States, within the Department of Agriculture, subject to the general supervision and direction of the Secretary of Agriculture (hereinafter referred to as the "Secretary").

(June 29, 1948, ch. 704, § 2, 62 Stat. 1070; June 7, 1949, ch. 175, § 1, 63 Stat. 154.)

AMENDMENTS

1949—Act June 7, 1949, placed the general supervision and direction of the Commodity Credit Corporation in the Secretary of Agriculture.

EFFECTIVE DATE

Section 18 of act June 29, 1948, provided that sections 714 to 714o of this title shall take effect as of midnight June 30, 1948.

SHORT TITLE

Congress in enacting sections 714 to 714p of this title provided by section 1 of act June 29, 1948, that they should be popularly known as the "Commodity Credit Corporation Charter Act".

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

§ 714a. Location of offices

The Corporation may establish offices in such place or places as it may deem necessary or desirable in the conduct of its business.

(June 29, 1948, ch. 704, § 3, 62 Stat. 1070.)

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

§ 714b. General powers of Corporation

The Corporation—

(a) Shall have succession in its corporate name.

(b) May adopt, alter, and use a corporate seal, which shall be judicially noticed.

(c) May sue and be sued, but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Corporation or its property. The district courts of the United States, including the district courts of any Territory or possession, shall have exclusive original jurisdiction, without regard to the amount in controversy, of all suits brought by or against the Corporation: *Provided*, That the Corporation may intervene in any court in any suit, action, or proceeding in which it has an interest. Any suit against the Corporation shall be brought in the District of Columbia, or in the district wherein the plaintiff resides or is engaged in business. No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought, or (2) in the event that the person bringing such suit shall have been under legal disability or beyond the seas at the time the right accrued, the suit shall have been brought within three years after the disability shall have ceased or within six years after the right accrued on which suit is brought, whichever period is longer. The defendant in any suit by or against the Corporation may plead, by way of set-off or counterclaim, any cause of action, whether arising out of the same transaction or not, which would otherwise be barred by such limitation if the claim upon which the defendant's cause of action is based had not been barred prior to the date that the plaintiff's cause of action arose: *Provided,* That the defendant shall not be awarded a judgment on any such set-off or counterclaim for any amount in excess of the amount of the plaintiff's claim established in the suit. All suits against the Corporation shall be tried by the court without a jury. Notwithstanding any other provision of this subchapter, the Federal Tort Claims Act (Public Law 601, Seventy-ninth Congres [1] [28 U.S.C. 1346(b) and 2671 et seq.] shall be applicable to the Corporation. Any suit by or against the United States as the real party in interest based upon any claim by or against the Corporation shall be subject to the provisions of subsection (c) of this section to the same extent as though such suit were by or against the Corporation, except that (1) any such suit against the United States based upon any claim of the type enumerated in section 1491 of title 28, may be brought in the United States Court of Claims, and (2) no such suit against the United States may be brought in a district court unless such suit might, without regard to the provisions of this subchapter, be brought in such court.

(d) May adopt, amend, and repeal bylaws, rules, and regulations governing the manner in which its business may be conducted and the powers vested in it may be exercised.

(e) Shall have all the rights, privileges, and immunities of the United States with respect to the right to priority of payment with respect to debts due from insolvent, deceased, or bankrupt debtors. The Corporation may assert such rights, privileges, and immunities in any suit, action, or proceeding.

(f) Shall be entitled to the use of the United States mails in the same manner and upon the same conditions as the executive departments of the Federal Government.

(g) May enter into and carry out such contracts or agreements as are necessary in the conduct of its business. State and local regulatory laws or rules shall not be applicable with respect to contracts or agreements of the Corporation or the parties thereto to the extent that such contracts or agreements provide that such laws or rules shall not be applicable, or to the extent that such laws or rules are inconsistent with such contracts or agreements.

(h) May contract for the use, in accordance with the usual customs of trade and commerce, of plants and facilities for the physical handlings, storage, processing, servicing, and transportation of the agricultural commodities subject to its control. The Corporation shall have power to acquire personal property necessary to the conduct of its business but shall not have power to acquire real property or any interest therein except that it may (a) rent or lease office space necessary for the conduct of its business and (b) acquire real property or any interest therein for the purpose of providing storage adequate to carry out effectively and efficiently any of the Corporation's programs, or of securing or discharging obligations owing to the Corporation, or of otherwise protecting the financial interests of the Corporation: *Provided,* That the authority contained in this subsection shall not be utilized by the Corporation for the purpose of acquiring real property, or any interest therein, in order to provide storage facilities for any commodity unless the Corporation determines that existing privately owned storage facilities for such commodity in the area concerned are not adequate: *Provided further,* That no refrigerated cold storage facilities shall be constructed or purchased except with funds specifically provided by Congress for that purpose: *And provided further,* That nothing contained in this subsection shall limit the duty of the Corporation, to the maximum extent practicable consistent with the fulfillment of the Corporation's purposes and the effective and efficient conduct of its business, to utilize the usual and customary channels, facilities, and arrangements of trade and commerce in the warehousing of commodities: *And provided further,* That to encourage the storage of grain on farms, where it can be stored at the lowest cost, the Corporation shall make loans to grain growers needing storage facilities when such growers shall apply to the Corporation for financing the construction or purchase of suitable storage, and these loans shall be deducted from the proceeds of price support loans or purchase agreements made between the Corporation and the growers. Notwithstanding any other provision of law, the Commodity Credit Corporation is authorized, upon terms and conditions prescribed or approved by the Secretary of Agriculture, to accept strategic and critical materials produced abroad in exchange for agricultural commodities acquired by the Corporation. Insofar as practicable, in effecting such exchange of goods, normal commercial trade channels shall be utilized and priority shall be given to commodities easily storable and those which serve as prime incentive goods to stimulate production of critical and strategic materials. The determination of the quantities and qualities of such materials which are desirable for stock piling and the determination of which materials are strategic and critical shall be made in the manner prescribed by section 2 of the Strategic and Critical Materials Stock Piling Act (60 Stat. 596) [50 U.S.C. 98a]. Strategic and critical materials acquired by Commodity Credit Corporation in exchange for agricultural commodities shall, to the extent approved by the Munitions Board of the Department of Defense, be transferred to the stock pile provided for by the Strategic and Critical Materials Stock Piling Act [50 U.S.C. 98 et seq.]: and when transferred to the stock pile the Commodity Credit Corporation shall be reimbursed for the strategic and critical materials so transferred to the stock pile from the funds made available for the purpose of the Strategic and Critical Materials Stock Piling Act, in an amount equal to the fair market value, as determined by the Secretary of the Treasury, of the material transferred to the stock pile. Nothing contained herein shall limit the authority of the Commodity Credit Corporation to acquire, hold, or dispose of such quantity of strategic and critical materials as it deems advisable in carrying out its functions and protecting its assets: *Provided*, That, notwithstanding any other provision of law, where a grain storage facility owned by the Corporation is not needed by the Corporation and, upon being offered for sale no person offers to pay the minimum price set by the Corporation for such facility for use in connection with storage or handling of agricultural commodities, then the Corporation may, without declaring such facility to be excess property, sell it by bids at not less than such minimum price to any public or private nonprofit agency or organization for use for the purposes of such agency or organization. This provision shall apply also to facilities which on the effective date of this Act have been declared excess to the needs of the Commodity Credit Corporation but have not been claimed by any other Government agency, or surplus to the needs of the Government but not disposed of pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, as amended [40 U.S.C. 471 et seq.].

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[1] So in original. Should be "Congress".

(i) May borrow money subject to any provision of law applicable to the Corporation: *Provided*, That the total of all money borrowed by the Corporation, other than trust deposits and advances received on sales, shall not at any time exceed in the aggregate $14,500,000,000. The Corporation shall at all times reserve a sufficient amount of its authorized borrowing power which, together with other funds available to the Corporation, will enable it to purchase, in accordance with its contracts with lending agencies, notes, or other obligations evidencing loans made by such agencies under the Corporation's programs.

(j) Shall determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid.

(k) Shall have authority to make final and conclusive settlement and adjustment of any claims by or against the Corporation or the accounts of its fiscal officers.

(*l*) May make such loans and advances of its funds as are necessary in the conduct of its business.

(m) Shall have such powers as may be necessary or appropriate for the exercise of the powers specifically vested in the Corporation, and all such incidental powers as are customary in corporations generally; but any research financed by the Corporation shall relate to the conservation or disposal of commodities owned or controlled by the Corporation and shall be conducted in collaboration with research agencies of the Department of Agriculture.

(June 29, 1948, ch. 704, § 4, 62 Stat. 1070; June 7, 1949, ch. 175, §§ 2, 5, 63 Stat. 154, 156; Aug. 10, 1949, ch. 412, § 12(a), 63 Stat. 591; June 28, 1950, ch. 381, § 2, 64 Stat. 261; Mar. 20, 1954, ch. 102, § 2, 68 Stat. 30; Aug. 31, 1954, ch. 1172, § 2, 68 Stat. 1047; Aug. 11, 1955, ch. 782, § 2, 69 Stat. 634; Aug. 1, 1956, ch. 815, § 1(a), 70 Stat. 783; Nov. 5, 1966, Pub. L. 89-758, 80 Stat. 1307.)

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in subsec. (c), means act Aug. 2, 1946, ch. 753, title IV, §§ 401-404, 410-413, 420-423, 60 Stat. 842, which was repealed by act June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948, and is now covered by sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure.

The Strategic and Critical Materials Stock Piling Act, referred to in subsec. (h), is act June 7, 1939, ch. 190, 53 Stat. 811, which is classified generally to subchapter III (§ 98 et seq.) of chapter 5 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 98 of Title 50 and Tables volume.

The effective date of this Act, referred to in subsec. (h), probably refers to the effective date of Pub. L. 89-758, which was approved on Nov. 5, 1966.

The Federal Property and Administrative Services Act of 1949, as amended, referred to in subsec. (h), is act June 30, 1949, ch. 288, 63 Stat. 377. The provisions of that act relating to management and disposal of government property are classified to chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note under section 471 of Title 40, and Tables volume.

CODIFICATION

The words "of the District of Columbia and" in the phrase of subsec. (c) reading "including the district courts of the District of Columbia and of any Territory or possession" have been deleted as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district" and section 88 of Title 28 which states that "The District of Columbia constitutes one judicial district".

AMENDMENTS

1966—Subsec. (h). Pub. L. 89-758 added provisions allowing for the sale of grain storage facilities by bids when no person offers to pay the minimum price set by the Commodity Credit Corporation at not less than the minimum price to any public or private nonprofit agency.

1956—Subsec. (i). Act Aug. 1, 1956, substituted "$14,500,000,000" for "$12,000,000,000".

1955—Subsec. (i). Act Aug. 11, 1955, substituted "$12,000,000,000" for "$10,000,000,000".

1954—Subsec. (i). Act Aug. 31, 1954, substituted "$10,000,000,000" for "$8,500,000,000".

Subsec. (i). Act Mar. 20, 1954, substituted "$8,500,000,000" for "$6,750,000,000".

1950—Subsec. (i). Act June 28, 1950, substituted "$6,750,000,000" for "$4,750,000,000".

1949—Subsec. (c). Act June 7, 1949, § 5, conferred jurisdiction on the district courts "without regard to the amount in controversy", enabled the Corporation and persons having claims against the Corporation to plead set-offs and counterclaims which are barred by the statute of limitations, if, at the time the plaintiff's cause of action arose, the defendant's cause of action on which the set-off or counterclaim is based was not barred by the statute of limitations, and provided that certain claims against the United States could be brought in the United States Court of Claims.

Subsec. (h). Act June 7, 1949, § 2, enabled the Corporation to acquire items of personal and real property to be used in connection with the care, preservation, storage, and handling of agricultural commodities controlled by it, and enabled the Corporation to take liens on real property as security for obligations owing to it and to bid in on any execution or foreclosure sale to protect its financial interests in the matter.

CHANGE OF NAME

The National Military Establishment was changed to the Department of Defense by act Aug. 10, 1949.

DELEGATION OF FUNCTIONS

Functions of the President under subsec. (h) of this section delegated, see section 402 of Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, and section 3(12) of Ex. Ord. No. 11725, June 27, 1973, 38 F.R. 17175, set out as a notes under section 2271 of the Appendix to Title 50, War and National Defense.

TRANSFER OF FUNCTIONS

The functions vested in the Munitions Board by subsec. (h) were transferred to the Director of the Office of Defense Mobilization by Reorg. Plan No. 3 of 1953, § 2(c), eff. June 12, 1953, 18 F.R. 3375, 67 Stat. 634, set out in the Appendix to Title 5, Government Organization and Employees. The Office of Defense Mobilization was subsequently abolished and the functions of the Director were transferred. For further details, see notes under section 2271 of the Appendix to Title 50, War and National Defense.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

ABOLISHMENT OF MUNITIONS BOARD AND TRANSFER OF FUNCTIONS

The Munitions Board, together with the office of Chairman, was abolished and the Board's functions transferred to the Secretary of Defense by Reorg. Plan No. 6 of 1953 eff. June 30, 1953, 18 F.R. 3743, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Agriculture commodity set-aside, see section 1691 et seq. of Title 7, Agriculture.

Utilization, by Secretary of Agriculture, of authority under subsec. (h) to make barters or exchanges of agricultural commodities for certain purposes, see section 1692 of Title 7, Agriculture.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 1692.

§ 714c. Specific powers of Corporation

In the fulfillment of its purposes and in carrying out its annual budget programs submitted to and approved by the Congress pursuant to the Government Corporation Control Act [31 U.S.C. 841 et seq.], the Corporation is authorized to use its general powers only to—

(a) Support the prices of agricultural commodities through loans, purchases, payments, and other operations.

(b) Make available materials and facilities required in connection with the production and marketing of agricultural commodities.

(c) Procure agricultural commodities for sale to other Government agencies, foreign governments, and domestic, foreign, or international relief or rehabilitation agencies, and to meet domestic requirements.

(d) Remove and dispose of or aid in the removal or disposition of surplus agricultural commodities.

(e) Increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities.

(f) Export or cause to be exported, or aid in the development of foreign markets for, agricultural commodities.

(g) Carry out such other operations as the Congress may specifically authorize or provide for.

In the Corporation's purchasing and selling operations with respect to agricultural commodities (except sales to other Government agencies), and in the warehousing, transporting, processing, or handling of agricultural commodities, the Corporation shall, to the maximum extent practicable consistent with the fulfillment of the Corporation's purposes and the effective and efficient conduct of its business, utilize the usual and customary channels, facilities, and arrangements of trade and commerce.

(June 29, 1948, ch. 704, § 5, 62 Stat. 1072.)

REFERENCES IN TEXT

The Government Corporation Control Act, referred to in text, is act Dec. 6, 1945, ch. 557, 59 Stat. 597, which is classified generally to chapter 14 (§ 841 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 841 of Title 31 and Tables volume.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2119.

§ 714d. Laws applicable to Corporation

The Federal statutes applicable to Commodity Credit Corporation, a Delaware corporation, shall be applicable to the Corporation. Commodity Credit Corporation, a Delaware corporation, shall cease to be an agency of the United States as provided in section 713(a) of this title.

(June 29, 1948, ch. 704, § 6, 62 Stat. 1072.)

REFERENCES IN TEXT

Section 713(a) of this title, referred to in text, was omitted from the Code. See Codification note under former section 713 of this title.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

§ 714e. Capital stock; amount; interest

The Corporation shall have a capital stock of $100,000,000 which shall be subscribed by the United States. Such subscription shall be deemed to be fully paid by the transfer of assets to the Corporation pursuant to section 714n of this title. The Corporation shall pay interest to the United States Treasury on the amount of its capital stock, and on the amount of the obligations of the Corporation purchased by the Secretary of the Treasury pursuant to the Act of March 8, 1938 (U.S.C., title 15, sec. 713a-4), as amended, at such rates as may be determined by the Secretary of the Treasury to be appropriate in view of the terms for which such amounts are made available to the Corporation.

(June 29, 1948, ch. 704, § 7, 62 Stat. 1072.)

REFERENCES IN TEXT

The Act of March 8, 1938, referred to in text, is act Mar. 8, 1938, ch. 44, §§ 1 to 5, 52 Stat. 107, which was classified to sections 713a-1 to 713a-5 of this title. Sections 713a-1 and 713a-2 were repealed by Pub. L. 87-155, § 1, Aug. 17, 1961, 75 Stat. 391, and section 713a-3 was omitted from the code as obsolete.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

§ 714f. Use of funds

The Corporation is authorized to use in the conduct of its business all its funds and other assets, including capital and net earnings therefrom, and all funds and other assets which have been or may hereafter be transferred or allocated to, borrowed by, or otherwise acquired by it.

(June 29, 1948, ch. 704, § 8, 62 Stat. 1072.)

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

CROSS REFERENCES

Reimbursement of appropriations available for classing or grading agricultural commodities without charge from nonadministrative funds of the Corporation, see section 440 of Title 7, Agriculture.

Transfer of nonadministrative funds of Commodity Credit Corporation for classing and grading purposes, see section 414a of Title 7.

§ 714g. Board of Directors

(a) Composition; appointment, tenure and compensation; quorum; duties

The management of the Corporation shall be vested in a board of directors (hereinafter referred to as the "Board"), subject to the general supervision and direction of the Secretary. The Secretary shall be an ex officio director and shall serve as Chairman of the Board. The Board shall consist of seven members (in addition to the Secretary), who shall be appointed by the President by and with the advice and consent of the Senate. In addition to their duties as members of the Board, such appointed members shall perform such other duties as may be prescribed by the Secretary. Each appointed member of the Board shall receive compensation at such rate not in excess of the maximum then payable under chapter 51 and subchapter III of chapter 53 of title 5 as may be fixed by the Secretary, except that any such member who holds another office or position under the Federal Government the compensation for which exceeds such rate may elect to receive compensation at the rate provided for such other office or position in lieu of the compensation provided by this section. A majority of the directors shall constitute a quorum of the Board and action shall be taken only by a majority vote of those present.

(b) Advisory board; composition, tenure and compensation; meetings; duties

In addition to the Board of Directors there shall be an advisory board reflecting broad agricultural and business experience in its membership and consisting of five members who shall be appointed by the President, and who shall serve at the pleasure of the President. Not more than three of such members shall belong to the same political party. The advisory board shall meet at the call of the Secretary, who shall require it to meet not less often than once each ninety days; shall survey the general policies of the Corporation, including its policies in connection with the purchase, storage, and sale of commodities, and the operation of lending and price-support programs; and shall advise the Secretary with respect thereto. Members of the advisory board shall receive for their services as members compensation of not to exceed $50 per diem when actually engaged in the performance of their duties as such, together with their necessary traveling expenses while going to and coming from meetings.

(June 29, 1948, ch. 704, § 9, 62 Stat. 1072; June 7, 1949, ch. 175, § 3, 63 Stat. 155; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Oct. 19, 1976, Pub. L. 94-561, § 4, 90 Stat. 2643.)

CODIFICATION

In subsec. (a), "chapter 51 and subchapter III of chapter 53 of title 5" was substituted for "the Classification Act of 1949, as amended" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-561 increased the number of Board of Directors from six to seven members.

1949—Act Oct. 28, 1949, struck out "Classification Act of 1923" and inserted in lieu thereof "Classification Act of 1949".

Act June 7, 1949, amended section generally by bringing the Board under the direct control of the Secretary who will serve as Chairman of the Board, and by adding subsec. (b) to provide for the appointment and duties of an advisory board.

REPEALS

Act Oct. 28, 1949, ch. 782, § 1106(a), 63 Stat. 972, set out in the credit of this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment of subsec. (a) effective Oct. 19, 1976, see section 5 of Pub. L. 94-561, set out as a note under section 5313 of Title 5, Government Organization and Employees.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

TERMINATION OF ADVISORY BOARDS

Advisory Boards in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in the Appendix to Title 5, Government Organization and Employees.

§ 714h. Officers and employees; appointment; duties

The Secretary shall appoint such officers and employees as may be necessary for the conduct of the business of the Corporation, define their authority and duties, delegate to them such of the powers vested in the Corporation as he may determine. With the exception of experts, appointments shall be made pursuant to the civil-service laws and chapter 51 and subchapter III of chapter 53 of title 5.

(June 29, 1948, ch. 704, § 10, 62 Stat. 1073; June 7, 1949, ch. 175, § 4, 63 Stat. 156; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; June 6, 1972, Pub. L. 92-310, title II, § 224(b), 86 Stat. 206.)

REFERENCES IN TEXT

The civil service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that Title.

CODIFICATION

"Chapter 51 and subchapter III of chapter 53 of title 5" was substituted for "the Classification Act of 1949" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1972—Pub. L. 92-310 eliminated provisions which permitted the Secretary to designate officers and employees to be bonded, and which authorized the Corporation to pay the premium on the bonds.

1949—Act Oct. 28, 1949, amended section by substituting the "Classification Act of 1949" in lieu of the "Classification Act of 1923".

Act June 7, 1949, amended section generally to permit the Secretary to appoint the officers and employees of the Corporation and to define their authority and duties.

REPEALS

Act Oct. 28, 1949, ch. 782, § 1106(a), 63 Stat. 972, set out in the credit of this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

SALES MANAGER

Pub. L. 87-367, title I, § 103(11), Oct. 4, 1961, 75 Stat. 789, repealed such part of section 101 of act Aug. 4, 1955, ch. 451, Ch. I, 69 Stat. 451, which authorized the position of sales manager in the Commodity Credit Corporation to be placed in grade 17 of the General Schedule of the Classification Act of 1949, now covered by section 5332 of Title 5, Government Organization and Employees.

Positions existing prior to Oct. 4, 1961, compensation thereof and appointments thereto unaffected by changes made by Pub. L. 87-367 and positions in grades 16, 17 and 18 of the General Schedule of the Classification Act of 1949 prior to Oct. 4, 1961, to remain in respective grades, until appropriate action is taken under title I of Pub. L. 87-367 and section 5108 of title 5, see section 104 of Pub. L. 87-367.

§ 714i. Cooperation with other governmental agencies

The Corporation may, with the consent of the agency concerned, accept and utilize, on a compensated or uncompensated basis, the officers, employees, services, facilities, and information of any agency of the Federal Government, including any bureau, office, administration, or other agency of the Department of Agriculture, and of any State, the District of Columbia, any Territory or possession, or any political subdivision thereof. The Corporation may allot to any bureau, office, administration, or other agency of the Department of Agriculture or transfer to such other agencies as it may request to assist it in the conduct of its business any of the funds available to it for administrative expenses. The personnel and facilities of the Corporation may, with the consent of the Corporation, be utilized on a reimbursable basis by any agency of the Federal Government, including any bureau, office, administration, or other agency of the Department of Agriculture, in the performance of any part or all of the functions of such agency.

(June 29, 1948, ch. 704, § 11, 62 Stat. 1073.)

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

CROSS REFERENCES

Transfer of nonadministrative funds of Commodity Credit Corporation to appropriations for classifying or grading of agricultural commodities, see section 414a of Title 7, Agriculture.

§ 714j. Utilization of associations and trade facilities

The Corporation may, in the conduct of its business, utilize on a contract or fee basis, committees or associations of producers, producer-owned and producer-controlled cooperative associations, and trade facilities.

(June 29, 1948, ch. 704, § 12, 62 Stat. 1073.)

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

§ 714k. Records; annual report

The Corporation shall at all times maintain complete and accurate books of account and shall file annually with the Secretary of Agriculture a complete report as to the business of the Corporation, a copy of which shall be forwarded by the Secretary of Agriculture to the President for transmission to the Congress.

(June 29, 1948, ch. 704, § 13, 62 Stat. 1073.)

EXCEPTIONS FROM TRANSFER OF FUNCTIONS

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

§ 714*l*. Interest of members of the Congress

The provisions of section 22 of title 41 shall apply to all contracts or agreements of the Corporation, except contracts or agreements of a kind which the Corporation may enter into with farmers participating in a program of the Corporation.

(June 29, 1948, ch. 704, § 14, 62 Stat. 1074.)

Exceptions From Transfer of Functions

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

§ 714m. Crimes and offenses

(a) False statements; overvaluation of securities

Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of influencing in any way the action of the Corporation, or for the purpose of obtaining for himself or another, money, property, or anything of value, under this subchapter, or under any other Act applicable to the Corporation, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or by imprisonment by not more than five years, or both.

(b) Embezzlement, etc.; false entries; fraudulent issue of obligations of corporation

Whoever, being connected in any capacity with the Corporation or any of its programs, (i) embezzles, abstracts, purloins, or willfully misapplies any money, funds, securities, or other things of value, whether belonging to the Corporation or pledged or otherwise entrusted to it; or (ii) with intent to defraud the Corporation, or any other body, politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Corporation, makes any false entry in any book, report, or statement of, or to, the Corporation, or draws any order, or issues, puts forth or assigns any note or other obligation or draft, mortgage, judgment, or decree thereof; or (iii) with intent to defraud the Corporation, participates or shares in, or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of the Corporation, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both.

(c) Larceny; conversion of property

Whoever shall willfully steal, conceal, remove, dispose of, or convert to his own use or to that of another any property owned or held by, or mortgaged or pledged to, the Corporation, or any property mortgaged or pledged as security for any promissory note, or other evidence of indebtedness, which the Corporation has guaranteed or is obligated to purchase upon tender, shall, upon conviction thereof, if such property be of an amount or value in excess of $500, be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both, and, if such property be of an amount or value of $500 or less, be punished by a fine of not more than $1,000 or by imprisonment for not more than one year, or both.

(d) Conspiracy to commit offense

Whoever conspires with another to accomplish any of the acts made unlawful by the preceding provisions of this section shall, upon conviction thereof, be subject to the same fine or imprisonment, or both, as is applicable in the case of conviction for doing such unlawful acts.

(e) General statutes applicable

All the general penal statutes relating to crimes and offenses against the United States shall apply with respect to the Corporation, its property, money, contracts and agreements, employees, and operations: *Provided*, That such general penal statutes shall not apply to the extent that they relate to crimes and offenses punishable under subsections (a), (b), (c), and (d) of this section: *Provided further*, That sections 431 and 432 of title 18 shall not apply to contracts or agreements of a kind which the Corporation may enter into with farmers participating in a program of the Corporation.

(f) Use of words "Commodity Credit Corporation"

No individual, association, partnership, or corporation shall use the words "Commodity Credit Corporation" or any combination of the same, as the name or a part thereof under which he or it shall do or purport to do business. Every individual, partnership, association, or corporation violating this prohibition shall be guilty of a misdemeanor and shall be punished by a fine of not more than $1,000 or by imprisonment for not more than one year, or both.

(June 29, 1948, ch. 704, § 15, 62 Stat. 1074; June 7, 1949, ch. 175, § 6, 63 Stat. 157; Aug. 1, 1956, ch. 815, § 2, 70 Stat. 783.)

Codification

"Sections 431 and 432 of title 18" were substituted for "sections 114 and 115 of the Act of March 4, 1909, as amended (18 U.S.C., 1940 edition, 204, 205)" on authority of act June 25, 1948, ch. 645, 62 Stat. 683, the first section of which enacted Title 18, Crimes and Criminal Procedure.

Amendments

1956—Subsec. (c). Act Aug. 1, 1956, made it an offense to willfully steal or convert property mortgaged or pledged to a lending agency under a program of the Corporation and prescribed punishment not exceeding $1,000 fine or one year imprisonment or both in the case of property of an amount or value of $500 or less.

1949—Subsec. (f). Act June 7, 1949, added subsec. (f).

Exceptions from Transfer of Functions

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

§ 714n. Transfer of assets of Commodity Credit Corporation, a Delaware Corporation

The assets, funds, property, and records of Commodity Credit Corporation, a Delaware corporation, are transferred to the Corporation. The rights, privileges, and powers, and the duties and liabilities of Commodity Credit Corporation, a Delaware corporation, in respect to any contract, agreement, loan, account, or other obligation shall become the rights, privileges, and powers, and the duties and liabilities, respectively, of the Corporation. The enforceable claims of or against Commodity Credit Corporation, a Delaware corporation, shall become the claims of or against, and may be enforced by or against, the Corporation: *Provided*, That nothing in this subchapter shall limit or extend any period of limitation otherwise applicable to such claims against the Corporation.

(June 29, 1948, ch. 704, § 16, 62 Stat. 1075.)

Exceptions from Transfer of Functions

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

Section Referred to in Other Sections

This section is referred to in section 714e of this title.

§ 714*o*. Dissolution of Delaware Corporation

The Secretary of Agriculture, representing the United States as the sole owner of the capital stock of Commodity Credit Corporation, a Delaware corporation, is authorized and directed to institute or cause to be instituted such proceedings as are required for the dissolution of said Corporation under the laws of the State of Delaware. The costs of such dissolution of said Corporation shall be borne by the Corporation.

(June 29, 1948, ch. 704, § 17, 62 Stat. 1075.)

Exceptions from Transfer of Functions

For exception of functions of corporations of the Department of Agriculture from transfer of functions to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, see Exceptions from Transfer of Functions note set out under section 712a of this title.

§ 714p. Release of innocent purchasers of converted goods

A buyer in the ordinary course of business of fungible goods sold and physically delivered by a warehouseman or other dealer who was regularly engaged in the business of buying and selling such goods shall take or be deemed to have taken such goods free of any claim, existing or hereafter arising, by Commodity Credit Corporation, based on the want of authority in the seller to sell such goods, provided the buyer purchased such goods for value in good faith and did not know or have reason to know of any defect in the seller's authority to sell such goods. To be entitled to relief under this section a buyer must assert as an affirmative defense and establish by a preponderance of the evidence the facts necessary to entitle him to such relief.

(June 29, 1948, ch. 704, § 19, as added May 23, 1955, ch. 46, 69 Stat. 65.)

CHAPTER 15A—INTERSTATE TRANSPORTATION OF PETROLEUM PRODUCTS

Sec.
715. Purpose of chapter.
715a. Definitions.
715b. Interstate transportation of contraband oil forbidden.
715c. Suspension of operation of section 715b of this title.
715d. Enforcement of chapter.
  (a) Rules and regulations.
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715g. Refusal of carrier to accept shipment without certificate of clearance; certificate as justifying acceptance of shipment.
715h. Hearings and investigation by boards; appointment of board and employees.
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  (a) Mandatory injunction upon application of President.
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715j. "President" as including agencies, officers and employees.
715k. Saving clause.
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715m. Cooperation between Secretary of Interior and Federal and State authorities.

Construction of Petroleum Pipe Lines

Act July 30, 1941, ch. 333, 55 Stat. 610, as amended June 30, 1942, ch. 180, 57 Stat. 270; June 8, 1945, ch. 177, 59 Stat. 233; July 25, 1947, ch. 327, § 1, 61 Stat. 449, related to the construction of pipe lines for the transportation and/or distribution of petroleum or petroleum products moving in interstate commerce, or the extension or completion of any such pipe lines already wholly or partly constructed, that might be necessary for national-defense purposes. Section 9 of Act July 30, 1941, provided that neither the President, any department or agency of the Government nor any person shall exercise any of the powers conferred by sections 2, 3, 4, or 6 of Act July 30, 1941, after June 30, 1946, and in no case shall any pipe line constructed, extended or completed under authority of section 4 be operated or maintained by or under the direction or control of the President or any department or agency of the Government after the expiration of one year after the termination of the unlimited national emergency proclaimed on May 27, 1941. Joint Res. July 25, 1947, ch. 327, § 3 61 Stat. 451, provided that in the interpretation of Act July 30, 1941, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergency proclaimed by the President on May 27, 1941.

National Defense Pipe Lines

Construction of a national defense pipe line from Baton Rouge, Louisiana, to Greensboro, North Carolina, by the Plantation Pipe Line Company was authorized by Proc. No. 2505, Aug. 23, 1941, 6 F.R. 4429, 55 Stat. 1670.

Construction of a national defense pipe line from South Portland, Maine, through North Troy, Vermont, to Montreal, Canada, by the Portland Pipe Line Company was authorized by Proc. No. 2517, Oct. 1, 1941, 6 F.R. 5081, 55 Stat. 1691.

Construction of a national defense pipe line from Port Saint Joe, Florida, to Chattanooga, Tennessee, by the Southeastern Pipe Line Company was authorized by Proc. No. 2508, Sept. 3, 1941, 6 F.R. 4583, 55 Stat. 1672.

Construction of one or more national defense pipe lines from Port Saint Joe, and other points on the Gulf Coast of Florida to the Saint Johns River, Florida, and a crude-oil pipe line from Yazoo, Mississippi, to Charleston, South Carolina and/or Savannah, Georgia, was authorized by act July 23, 1942, ch. 520, § 1, 56 Stat. 703, as amended June 17, 1943, ch. 127, 57 Stat. 156.

Construction of a national defense pipe line from El Dorado, Arkansas, to Helena, Arkansas, by the Project Five Pipe Line Corporation, was authorized by Proc. No. 2567, Aug. 28, 1942, 7 F.R. 6839, 56 Stat. 1975.

§ 715. Purpose of chapter

It is declared to be the policy of Congress to protect interstate and foreign commerce from the diversion and obstruction of, and the burden and harmful effect upon, such commerce caused by contraband oil as herein defined, and to encourage the conservation of deposits of crude oil situated within the United States.

(Feb. 22, 1935, ch. 18, § 1, 49 Stat. 30.)

SHORT TITLE

This chapter is commonly known as the Connally Hot Oil Act.

§ 715a. Definitions

As used in this chapter—

(1) The term "contraband oil" means petroleum which, or any constituent part of which, was produced, transported, or withdrawn from storage in excess of the amounts permitted to be produced, transported, or withdrawn from storage under the laws of a State or under any regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of such State, or any of the products of such petroleum, except petroleum or any of its constituent parts, title to which has been acquired by a State pursuant to its laws.

(2) The term "products" or "petroleum products" includes any article produced or derived in whole or in part from petroleum or any product thereof by refining, processing, manufacturing, or otherwise.

(3) The term "interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, or from any place in the United States to a foreign country, but only insofar as such commerce takes place within the United States.

(4) The term "person" includes an individual, partnership, corporation, or joint-stock company,

(Feb. 22, 1935, ch. 18, § 2, 49 Stat. 30; Oct. 13, 1966, Pub. L. 89-644, 80 Stat. 890.)

AMENDMENTS

1966—Pub. L. 89-644 inserted provisions in par. (1) exempting petroleum or any of its constituent parts, title to which has been acquired by a State pursuant to its laws.

§ 715b. Interstate transportation of contraband oil forbidden

The shipment or transportation in interstate commerce from any State of contraband oil produced in such State is prohibited. For the purposes of this section contraband oil shall not be deemed to have been produced in a State if none of the petroleum constituting such contraband oil, or from which it was produced or derived, was produced, transported, or withdrawn from storage in excess of the amounts permitted to be produced, transported, or withdrawn from storage under the laws of such State or under any regulation or order prescribed thereunder by any board, commission, officer, or other duly authorized agency of such State.

(Feb. 22, 1935, ch. 18, § 3, 49 Stat. 31.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 715c of this title.

§ 715c. Suspension of operation of section 715b of this title

Whenever the President finds that the amount of petroleum and petroleum products moving in interstate commerce is so limited as to be the cause, in whole or in part, of a lack of parity between supply (including imports and reasonable withdrawals from storage) and consumptive demand (including exports and reasonable additions to storage) resulting in an undue burden on or restriction of interstate commerce in petroleum and petroleum products, he shall by proclamation declare such finding, and thereupon the provisions of section 715b of this title shall be inoperative until such time as the President shall find and by proclamation declare that the conditions which gave rise to the suspension of the operation of the provisions of such section no longer exist. If any provision of this section or the application thereof shall be held to be invalid, the validity of application of section 715b of this title shall not be affected thereby.

(Feb. 22, 1935, ch. 18, § 4, 49 Stat. 31.)

§ 715d. Enforcement of chapter

(a) Rules and regulations

The President shall prescribe such regulations as he finds necessary or appropriate for the enforcement of the provisions of this chapter, including but not limited to regulations requiring reports, maps, affidavits, and other documents relating to the production, storage, refining, processing, transporting, or handling of petroleum and petroleum products, and providing for the keeping of books and records, and for the inspection of such books and records and of properties and facilities.

(b) Certificate of clearance for petroleum and petroleum products

Whenever the President finds it necessary or appropriate for the enforcement of the provisions of this chapter he shall require certificates of clearance for petroleum and petroleum products moving or to be moved in interstate commerce from any particular area, and shall establish a board or boards for the issuance of such certificates. A certificate of clearance shall be issued by a board so established in any case where such board determines that the petroleum or petroleum products in question does not constitute contraband oil. Denial of any such certificate shall be by order of the board, and only after reasonable opportunity for hearing. Whenever a certificate of clearance is required for any area in any State, it shall be unlawful to ship or transport petroleum or petroleum products in interstate commerce from such area unless a certificate has been obtained therefor.

(c) Review of order of denial of certificate of clearance

Any person whose application for a certificate of clearance is denied may obtain a review of the order denying such application in the United States District Court for the district wherein the board is sitting by filing in such court within thirty days after the entry of such order a written petition praying that the order of the board be modified or set aside, in whole or in part. A copy of such petition shall be forthwith served upon the board, and thereupon the board shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript, such court shall have jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the board shall be considered by the court unless such objection shall have been urged before the board. The finding of the board as to the facts, if supported by evidence, shall be conclusive. The judgment and decree of the court shall be final, subject to review as provided in sections 1254, 1291, and 1292 of title 28.

(Feb. 22, 1935, ch. 18, § 5, 49 Stat. 31.)

CODIFICATION

"Sections 1254, 1291, and 1292 of title 28", referred to in subsec. (c), were substituted for "sections 128 and 240 of the Judicial Code, as amended [28 U.S.C. 225 and 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Application of, see rule 81, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 715f, 715h of this title; title 18 section 6001.

§ 715e. Penalties for violation of chapter

Any person knowingly violating any provision of this chapter or any regulation prescribed thereunder shall upon conviction be punished by a fine of not to exceed $2,000 or by imprisonment for not to exceed six months, or by both such fine and imprisonment.

(Feb. 22, 1935, ch. 18, § 6, 49 Stat. 32.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 715g of this title.

§ 715f. Forfeiture of contraband oil shipped in violation of law; procedure

(a) Contraband oil shipped or transported in interstate commerce in violation of the provisions of this chapter shall be liable to be proceeded against in any district court of the United States within the jurisdiction of which the same may be found, and seized for forfeiture to the United States by a process of libel for condemnation; but in any such case the court may in its discretion, and under such terms and conditions as it shall prescribe, order the return of such contraband oil to the owner thereof where undue hardship would result from such forfeiture. The proceedings in such cases shall conform as nearly as may be to proceedings in rem in admiralty, except that either party may demand a trial by jury of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the United States. Contraband oil forfeited to the United States as provided in this section shall be used or disposed of pursuant to such rules and regulations as the President shall prescribe.

(b) No such forfeiture shall be made in the case of contraband oil owned by any person (other than a person shipping such contraband oil in violation of the provisions of this chapter) who has with respect to such contraband oil a certificate of clearance which on its face appears to be valid and to have been issued by a board created under authority of section 715d of this title, certifying that the shipment in question is not contraband oil, and such person had no reasonable ground for believing such certificate to be invalid or to have been issued as a result of fraud or misrepresentation of fact.

(Feb. 22, 1935, ch. 18, § 7, 49 Stat. 32.)

§ 715g. Refusal of carrier to accept shipment without certificate of clearance; certificate as justifying acceptance of shipment

No common carrier who shall refuse to accept petroleum or petroleum products from any area in which certificates of clearance are required under authority of this chapter, by reason of the failure of the shipper to deliver such a certificate to such carrier, or who shall refuse to accept any petroleum or petroleum products when having reasonable ground for believing that such petroleum or petroleum products constitute contraband oil, shall be liable on account of such refusal for any penalties or damages. No common carrier shall be subject to any penalty under section 715e of this title in any case where (1) such carrier has a certificate of clearance which on its face appears to be valid and to have been issued by a board created under authority of section 715d of this title, certifying that the shipment in question is not contraband oil, and such carrier had no reasonable ground for believing such certificate to be invalid or to have been issued as a result of fraud or misrepresentation of fact, or (2) such carrier, as respects any shipment originating in any area where certificates of clearance are not required under authority of this chapter, had no reasonable ground for believing such petroleum or petroleum products to constitute contraband oil.

(Feb. 22, 1935, ch. 18, § 8, 49 Stat. 32.)

§ 715h. Hearings and investigation by boards; appointment of board and employees

(a) Any board established under authority of section 715d of this title, and any agency designated under authority of section 715j of this title, may hold and conduct such hearings, investigations, and proceedings as may be necessary for the purposes of this chapter, and for such purposes those provisions of section 78u of this title relating to the administering of oaths and affirmations, and to the attendance and testimony of witnesses and the production of evidence (including penalties), shall apply.

(b) The members of any board established under authority of section 715d of this title shall be appointed by the President, subject to chapter 51 and subchapter III of chapter 53 of title 5; and any such board may appoint, subject to chapter 51 and subchapter III of chapter 53 of title 5, such employees as may be necessary for the execution of its functions under this chapter.

(Feb. 22, 1935, ch. 18, § 9, 49 Stat. 33; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972.)

CODIFICATION

Provisions of subsec. (b) that authorized appointments "without regard to the civil service laws" were omitted as obsolete and superseded. Such appointments are now subject to the civil service laws unless specifically excepted by those laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5, Government Organization and Employees.

"Chapter 51 and subchapter III of chapter 53 of title 5" were substituted for "the Classification Act of 1949, as amended" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1949—Subsec. (b). Act Oct. 28, 1949, struck out "Classification Act of 1923, as amended" and inserted in lieu thereof "Classification Act of 1949".

REPEALS

Act Oct. 28, 1949, ch. 782, § 1106(a), 63 Stat. 972, set out in the credit of this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

§ 715i. Restraining violations

(a) Mandatory injunction upon application of President

Upon application of the President, by the Attorney General, the United States District Courts shall have jurisdiction to issue mandatory injunctions commanding any person to comply with the provisions of this chapter or any regulation issued thereunder.

(b) Discretionary action in district court to enjoin acts or practices

Whenever it shall appear to the President that any person is engaged or about to engage in any acts or practices that constitute or will constitute a violation of any provision of this chapter or of any regulation thereunder, he may in his discretion, by the Attorney General, bring an action in the proper United States District Court to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond.

(c) Exclusive jurisdiction of district court; review

The United States District Courts shall have exclusive jurisdiction of violations of this chapter or the regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or the regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this chapter or regulations thereunder, or to enjoin any violation of this chapter or any regulations thereunder, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, and 1292 of title 28.

(Feb. 22, 1935, ch. 18, § 10, 49 Stat. 33.)

CODIFICATION

"Sections 1254, 1291, and 1292 of title 28", referred to in subsec. (c), were substituted for "sections 128 and 240 of the Judicial Code, as amended [28 U.S.C. 225 and 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1, Title 28, Appendix, Judiciary and Judicial Procedure.

Injunctions, see rule 65.

Judgment, see rule 54.

One form of action, see rule 2.

Process, see rule 4.

FEDERAL RULES OF CRIMINAL PROCEDURE

Continuation of section under rule 18, see note by Advisory Committee under rule 18, Title 18, Appendix, Crimes and Criminal Procedure.

Venue, see rule 18 et seq.

CROSS REFERENCES

Venue of district courts, see section 1391 et seq. of Title 28, Judiciary and Judicial Procedure.

§ 715j. "President" as including agencies, officers and employees

Wherever reference is made in this chapter to the President such reference shall be held to include, in addition to the President, any agency, officer, or employee who may be designated by the President for the execution of any of the powers and functions vested in the President under this chapter.

(Feb. 22, 1935, ch. 18, § 11, 49 Stat. 33.)

DELEGATION OF POWERS

Ex. Ord. No. 6979, Feb. 28, 1935, which designated and appointed the Secretary of the Interior to execute the powers and functions vested in the President by this chapter except those vested in him by section 715c of this title, was superseded by Ex. Ord. No. 10752, set out as a note under this section.

Ex. Ord. No. 7756, Dec. 1, 1937, 2 F.R. 2664, which delegated to the Secretary of the Interior the powers and functions vested in the President under this chapter except those vested in him by section 715c of this title, and authorized the Secretary to establish a Petroleum Conservation Division in the Department of the Interior, the functions and duties of which shall be: (1) to assist, in such manner as may be prescribed by the Secretary of the Interior, in administering the said act, (2) to cooperate with the oil and gas-producing States in the prevention of waste in oil and gas production and in the adoption of uniform oil- and gas-conservation laws and regulations, and (3) to keep informed currently as to facts which may be required for the exercise of the responsibility of the President under section 715c of this title, was superseded by Ex. Ord. No. 10752, set out as a note under this section.

EX. ORD. NO. 10752. DELEGATION OF FUNCTIONS TO THE SECRETARY OF THE INTERIOR

Ex. Ord. No. 10752, Feb. 12, 1958, 23 F.R. 973, provided:

SECTION 1. The Secretary of the Interior is hereby designated and appointed as the agent of the President for the execution of all the powers and functions vested in the President by the act of February 22, 1935, 49 Stat. 30, entitled "An Act to regulate interstate and foreign commerce in petroleum and its products by prohibiting the shipment in such commerce of petroleum and its products produced in violation of State law, and for other purposes," as amended (15 U.S.C. 715 *et seq.*), except those vested in the President by section 4 of the act (15 U.S.C. 715c).

SEC. 2. The Secretary of the Interior may make such provisions in the Department of the Interior as he may deem appropriate to administer the said act.

SEC. 3. This Executive order supersedes Executive Order No. 6979 of February 28, 1935, Executive Order No. 7756 of December 1, 1937 (2 F.R. 2664), Executive Order No. 9732 of June 3, 1946 (11 F.R. 5985), and paragraph (q) of section 1 of Executive Order No. 10250 of June 5, 1951 (16 F.R. 5385).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 715h of this title.

§ 715k. Saving clause

If any provision of this chapter, or the application thereof to any person or circumstance, shall be held invalid, the validity of the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(Feb. 22, 1935, ch. 18, § 12, 49 Stat. 33.)

§ 715*l*. Repealed. June 22, 1942, ch. 436, 56 Stat. 381

Section, acts Feb. 22, 1935, ch. 18, § 13, 49 Stat. 33; June 14, 1937, ch. 335, 50 Stat. 257; June 29, 1939, ch. 250, 53 Stat. 927, provided for expiration of this chapter on June 30, 1942.

§ 715m. Cooperation between Secretary of Interior and Federal and State authorities

The Secretary of the Interior, in carrying out this chapter, is authorized to cooperate with Federal and State authorities.

(June 25, 1946, ch. 472, § 3, 60 Stat. 307.)

CODIFICATION

Section was not enacted as a part of the Connally Hot Oil Act which comprises this chapter.

DELEGATION OF POWERS

Delegation of President's authority to the Secretary of the Interior, see note set out under section 715j of this title.

CHAPTER 15B—NATURAL GAS

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717v. Separability of provisions.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 719c, 719j of this title; title 10 section 7430; title 30 section 185; title 49 sections 1671, 1672, 1674, 1680; title 50 section 167i.

§ 717. Regulation of natural gas companies

(a) Necessity of regulation in public interest

As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) Transactions to which provisions of chapter applicable

The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

(c) Intra-state transactions exempt from provisions of chapter; certification from state commission as conclusive evidence

The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction.

(June 21, 1938, ch. 556, § 1, 52 Stat. 821; Mar. 27, 1954, ch. 115, 68 Stat. 36.)

AMENDMENTS

1954—Subsec. (c). Act Mar. 27, 1954, added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 1676.

§ 717a. Definitions

When used in this chapter, unless the context otherwise requires—

(1) "Person" includes an individual or a corporation.

(2) "Corporation" includes any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, receiver or receivers, trustee or trustees of any of the foregoing, but shall not include municipalities as hereinafter defined.

(3) "Municipality" means a city, county, or other political subdivision or agency of a State.

(4) "State" means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

(5) "Natural gas" means either natural gas unmixed, or any mixture of naturlal and artificial gas.

(6) "Natural-gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

(7) "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

(8) "State commission" means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the State or municipality.

(9) "Commission" and "Commissioner" means the Federal Power Commission, and a member thereof, respectively.

(June 21, 1938, ch. 556, § 2, 52 Stat. 821.)

CROSS REFERENCES

Federal Power Commission, creation of, see section 792 of Title 16, Conservation.

§ 717b. Exportation or importation of natural gas

After six months from June 21, 1938, no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. The Commission may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.

(June 21, 1938, ch. 556, § 3, 52 Stat. 822.)

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Federal Power Commission were, with certain reservations, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

DELEGATION OF FUNCTIONS

Functions of the President respecting certain facilities constructed and maintained on United States borders delegated to the Secretary of State, see Ex. Ord. No. 11423, Aug. 16, 1968, 33 F.R. 11741, set out as a note under section 301 of Title 3, The President.

EX. ORD. NO. 10485. PERFORMANCE OF FUNCTIONS RESPECTING ELECTRIC POWER AND NATURAL GAS FACILITIES LOCATED ON UNITED STATES BORDERS

Ex. Ord. No. 10485, Sept. 3, 1953, 18 F.R. 5397, provided:

SECTION 1. (a) The Federal Power Commission is hereby designated and empowered to perform the following-described functions:

(1) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the transmission of electric energy between the United States and a foreign country.

(2) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the exportation or importation of natural gas to or from a foreign country.

(3) Upon finding the issuance of the permit to be consistent with the public interest, and, after obtaining the favorable recommendations of the Secretary of State and the Secretary of Defense thereon, to issue to the applicant, as appropriate, a permit for such construction, operation, maintenance, or connection. The Commission shall have the power to attach to the issuance of the permit and to the exercise of the rights granted thereunder such conditions as the public interest may in its judgment require.

(b) In any case wherein the Federal Power Commission, the Secretary of State, and the Secretary of Defense cannot agree as to whether or not a permit should be issued, the Commission shall submit to the President for approval or disapproval the application for a permit with the respective views of the Commission, the Secretary of State and the Secretary of Defense.

SEC. 2. The Chairman or Acting Chairman of the Federal Power Commission is hereby designated and empowered to sign any permits issued by the Federal Power Commission pursuant to section 1(a)(3) hereof.

SEC. 3. The Federal Power Commission is authorized to issue such rules and regulations, and to prescribe such procedures, as it may from time to time deem necessary or desirable for the exercise of the authority delegated to it by this order.

SEC. 4. All Presidential Permits heretofore issued pursuant to Executive Order No. 8202 of July 13, 1939, and in force at the time of the issuance of this order, and all permits issued hereunder, shall remain in full force and effect until modified or revoked by the President or by the Federal Power Commission.

SEC. 5. Executive Order No. 8202 of July 13, 1939, is hereby revoked.

§ 717c. Rates and charges

(a) Just and reasonable rates and charges

All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is declared to be unlawful.

(b) Undue preferences and unreasonable rates and charges prohibited

No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Filing of rates and charges with Commission; public inspection of schedules

Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from June 21, 1938) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Changes in rates and charges; notice to Commission

Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The

Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Authority of Commission to hold hearings concerning new schedule of rates

Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, State commission, or gas distributing company, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

(June 21, 1938, ch. 556, § 4, 52 Stat. 822; May 21, 1962, Pub. L. 87-454, 76 Stat. 72.)

AMENDMENTS

1962—Subsec. (e). Pub. L. 87-454 inserted "or gas distributing company" following "State commission", and deleted a proviso which denied authority to the Commission to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Power Commission, with certain reservations, to the chairman of such commission, see Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 1671.

§ 717d. Fixing rates and charges; determination of cost of production or transportation

(a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

(b) The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas.

(June 21, 1938, ch. 556, § 5, 52 Stat. 823.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Power Commission, with certain reservations, to the chairman of such commission, see Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 1671.

§ 717e. Ascertainment of cost of property

(a) The Commission may investigate and ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property.

(b) Every natural-gas company upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction.

(June 21, 1938, ch. 556, § 6, 52 Stat. 824.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Power Commission, with certain reservations, to the chairman of such commission, see Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 717f. Construction, extension, or abandonment of facilities

(a) Extension or improvement of facilities on order of court; notice and hearing

Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: *Provided*, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers.

(b) Abandonment of facilities or services; approval of Commission

No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

(c) Certificate of public convenience and necessity

No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however*, That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on February 7, 1942, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after February 7, 1942. Pending the determination of any such application, the continuance of such operation shall be lawful.

In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however*, That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

(d) Application for certificate of public convenience and necessity

Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form, contain such information, and notice thereof shall be served upon such interested parties and in such manner as the Commission shall, by regulation, require.

(e) Granting of certificate of public convenience and necessity

Except in the cases governed by the provisos contained in subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

(f) Determination of service area

The Commission, after a hearing had upon its own motion or upon application, may determine the service area to which each authorization under this section is to be limited. Within such service area as determined by the Commission a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization.

(g) Certificate of public convenience and necessity for service of area already being served

Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company.

(h) Right of eminent domain for construction of pipelines, etc.

When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000.

(June 21, 1938, ch. 556, § 7, 52 Stat. 824; Feb. 7, 1942, ch. 49, 56 Stat. 83; July 25, 1947, ch. 333, 61 Stat. 459.)

AMENDMENTS

1947—Subsec. (b). Act July 25, 1947, added subsec. (h).

1942—Subsecs. (c) to (g). Act Feb. 7, 1942, struck out former subsec. (c), and added subsecs. (c) to (g).

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Power Commission, with certain reservations, to the chairman of such commission, see Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

FEDERAL RULES OF CIVIL PROCEDURE

Condemnation of property, see rule 71A, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 717g. Accounts; records; memoranda

(a) Rules and regulations for keeping and preserving accounts, records, etc.

Every natural-gas company shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this chapter: *Provided, however*, That nothing in this chapter shall relieve any such natural-gas company from keeping any accounts, memoranda, or records which such natural-gas company may be required to keep by or under authority of the laws of any State. The Commission may prescribe a system of accounts to be kept by such natural-gas companies, and may classify such natural-gas companies and prescribe a system of accounts for each class. The Commission, after notice and opportunity for hearing, may determine by order the accounts in which particular outlays or receipts shall be entered, charged, or credited. The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry, and the Commission may suspend a charge or credit pending submission of satisfactory proof in support thereof.

(b) Access to and inspection of accounts and records

The Commission shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of natural-gas companies; and it shall be the duty of such natural-gas companies to furnish to the Commission, within such reasonable time as the Commission may order, any information with respect thereto which the Commission may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the Commission free access to its property and its accounts, records, and memoranda when requested so to do. No member, officer, or employee of the Commission shall divulge any fact or information which may come to his knowledge during the course of examination of books, records, data, or accounts, except insofar as he may be directed by the Commission or by a court.

(c) Books, accounts, etc., of the person controlling gas company subject to examination

The books, accounts, memoranda, and records of any person who controls directly or indirectly a natural-gas company subject to the jurisdiction of the Commission and of any other company controlled by such person, insofar as they relate to transactions with or the business of such natural-gas company, shall be subject to examination on the order of the Commission.

(June 21, 1938, ch. 556, § 8, 52 Stat. 825.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Power Commission, with certain reservations, to the chairman of such commission, see Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 717h. Rates of depreciation

(a) The Commission may, after hearing, require natural-gas companies to carry proper and adequate depreciation and amortization accounts in accordance with such rules, regulations, and forms of account as the Commission may prescribe. The Commission may from time to time ascertain and determine, and by order fix, the proper and adequate rates of depreciation and amortization of the several classes of property of each natural-gas company used or useful in the production, transportation, or sale of natural gas. Each natural-gas company shall conform its depreciation and amortization accounts to the rates so ascertained, determined, and fixed. No natural-gas company subject to the jurisdiction of the Commission shall charge to operating expenses any depreciation or amortization charges on classes of property other than those prescribed by the Commission, or charge with respect to any class of property a percentage of depreciation or amortization other than that prescribed therefor by the Commission. No such natural-gas company shall in any case include in any form under its operating or other expenses any depreciation, amortization, or other charge or expenditure included elsewhere as a depreciation or amortization charge or otherwise under its operating or other expenses. Nothing in this section shall limit the power of a State commission to determine in the exercise of its jurisdiction, with respect to any natural-gas company, the percentage rates of depreciation or amortization to be allowed, as to any class of property of such natural-gas company, or the composite depreciation or amortization rate, for the purpose of determining rates or charges.

(b) The Commission, before prescribing any rules or requirements as to accounts, records, or memoranda, or as to depreciation or amortization rates, shall notify each State commission having jurisdiction with respect to any natural-gas company involved and shall give reasonable opportunity to each such commission to present its views and shall receive and consider such views and recommendations.

(June 21, 1938, ch. 556, § 9, 52 Stat. 826.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Power Commission, with certain reservations, to the chairman of such commission, see Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 717i. Periodic and special reports

(a) Every natural-gas company shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper administration of this chapter. The Commission may prescribe the manner and form in which such reports shall be made, and require from such natural-gas companies specific answers to all questions upon which the Commission may need information. The Commission may require that such reports shall include, among other things, full information as to assets and liabilities, capitalization, investment and reduction thereof, gross receipts, interest due and paid, depreciation, amortization, and other reserves, cost of facilities, cost of maintenance and operation of facilities for the production, transportation, or sale of natural gas, cost of renewal and replacement of such facilities, transportation, delivery, use, and sale of natural gas. The Commission may require any such natural-gas company to make adequate provision for currently determining such costs and other facts. Such reports shall be made under oath unless the Commission otherwise specifies.

(b) It shall be unlawful for any natural-gas company willfully to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, memorandum, record, or account required to be made, filed, or kept under this chapter or any rule, regulation, or order thereunder.

(June 21, 1938, ch. 556, § 10, 52 Stat. 826.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Power Commission, with certain reservations, to the chairman of such commission, see Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 717j. State compacts for conservation, transportation, etc., of natural gas

(a) Assembly of pertinent information; report to Congress

In case two or more States propose to the Congress compacts dealing with the conservation, production, transportation, or distribution of natural gas it shall be the duty of the Commission to assemble pertinent information relative to the matters covered in any such proposed compact, to make public and to report to the Congress information so obtained, together with such recommendations for further legislation as may appear to be appropriate or necessary to carry out the purposes of such proposed compact and to aid in the conservation of natural-gas resources within the United States and in the orderly, equitable, and economic production, transportation, and distrioution of natural gas.

(b) Assembly of information relative to operation of compact; report to Congress

It shall be the duty of the Commission to assemble and keep current pertinent information relative to the effect and operation of any compact between two or more States heretofore or hereafter approved by the Congress, to make such information public, and to report to the Congress, from time to time, the information so obtained, together with such recommendations as may appear to be appropriate or necessary to promote the purposes of such compact.

(c) Availability of services, etc., of other agencies

In carrying out the purposes of this chapter, the Commission shall, so far as practicable, avail itself of the services, records, reports, and information of the executive departments and other agencies of the Government, and the President may, from time to time, direct that such services and facilities be made available to the Commission.

(June 21, 1938, ch. 556, § 11, 52 Stat. 827.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Power Commission, with certain reservations, to the chairman of such commission, see Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 717k. Officials dealing in securities

It shall be unlawful for any officer or director of any natural-gas company to receive for his own benefit, directly or indirectly, any money or thing of value in respect to the negotiation, hypothecation, or sale by such natural-gas company of any security issued, or to be issued, by such natural-gas company, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends, other than liquidating dividends, of such natural-gas company from any funds properly included in capital account.

(June 21, 1938, ch. 556, § 12, 52 Stat. 827.)

§ 717*l*. Complaints

Any State, municipality, or State commission complaining of anything done or omitted to be done by any natural-gas company in contravention of the provisions of this chapter may apply to the Commission by petition, which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such natural-gas company, which shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time to be specified by the Commission.

(June 21, 1938, ch. 556, § 13, 52 Stat. 827.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Power Commission, with certain reservations, to the chairman of such commission, see Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 717m. Investigations by Commission

(a) Power of Commission

The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person has violated or is about to violate any provisions of this chapter or any rule, regulation, or order thereunder, or to aid in the enforcement of the provisions of this chapter or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation to the Congress. The Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish in the manner authorized by section 825k of title 16, and make available to State commissions and municipalities, information concerning any such matter.

(b) Determination of adequacy of gas reserves

The Commission may, after hearing, determine the adequacy or inadequacy of the gas reserves held or controlled by any natural-gas company, or by anyone on its behalf, including its owned or leased properties or royalty contracts; and may also, after hearing, determine the propriety and reasonableness of the inclusion in operating expenses, capital, or surplus of all delay rentals or other forms of rental or compensation for unoperated lands and leases. For the purpose of such determinations, the Commission may require any natural-gas company to file with the Commission true copies of all its lease and royalty agreements with respect to such gas reserves.

(c) Administration of oaths and affirmations; subpena of witnesses, etc.

For the purpose of any investigation or any other proceeding under this chapter, any member of the Commission, or any officer designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission finds relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or at any designated place of hearing. Witnesses summoned by the Commission to appear before it shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(d) Jurisdiction of courts of United States

In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. Such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found or may be doing business. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(e) Testimony of witnesses

The testimony of any witness may be taken at the instance of a party, in any proceeding or investigation pending before the Commission, by deposition at any time after the proceeding is at issue. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it at any stage of such proceeding or investigation. Such depositions may be taken before any person authorized to administer oaths not being of counsel or attorney to either of the parties, nor interested in the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided. Such testimony shall be reduced to writing by the person taking deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

(f) Deposition of witnesses in a foreign country

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

(g) Witness fees

Witnesses whose depositions are taken as authorized in this chapter, and the person or officer taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(June 21, 1938, ch. 556, § 14, 52 Stat. 828; Oct. 15, 1970, Pub. L. 91-452, title II, § 218, 84 Stat. 929.)

AMENDMENTS

1970—Subsec. (h). Pub. L. 91-452 struck out subsec. (h) which related to the immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Power Commission, with certain reservations, to the chairman of such commission, see Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Contempt proceedings, see sections 401, 402, 3285, 3691 and 3771 of Title 18, Crimes and Criminal Procedure.

Fees and mileage of witnesses, see chapter 119 of Title 28, Judiciary and Judicial Procedure.

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Misdemeanor, offense punishable by imprisonment not exceeding one year as, see section 1 of Title 18, Crimes and Criminal Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Process, see rule 4, Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal contempt, see rule 42 and note by Advisory Committee under the rule, Title 18, Appendix, Crimes and Criminal Procedure.

§ 717n. Hearings; rules of procedure

(a) Hearings under this chapter may be held before the Commission, any member or members thereof, or any representative of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before it, the Commission in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest.

(b) All hearings, investigations, and proceedings under this chapter shall be governed by rules of practice and procedure to be adopted by the Commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation issued under the authority of this chapter.

(June 21, 1938, ch. 556, § 15, 52 Stat. 829.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Power Commission, with certain reservations, to the chairman of such commission, see Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 717o. Administrative powers of Commission; rules, regulations, and orders

The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this chapter; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours.

(June 21, 1938, ch. 556, § 16, 52 Stat. 830.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Power Commission, with certain reservations, to the chairman of such commission, see Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 717p. Joint boards

(a) Reference of matters to joint boards; composition and power

The Commission may refer any matter arising in the administration of this chapter to a board to be composed of a member or members, as determined by the Commission, from the State or each of the States affected or to be affected by such matter. Any such board shall be vested with the same power and be subject to the same duties and liabilities as in the case of a member of the Commission when designated by the Commission to hold any hearings. The action of such board shall have such force and effect and its proceedings shall be conducted in such manner as the Commission shall by regulations prescribe. The Board shall be appointed by the Commission from persons nominated by the State commission of each State affected, or by the Governor of such State if there is no State commission. Each State affected shall be entitled to the same number of representatives on the board unless the nominating power of such State waives such right. The Commission shall have discretion to reject the nominee from any State, but shall thereupon invite a new nomination from that State. The members of a board shall receive such allowances for expenses as the Commission shall provide. The Commission may, when in its discretion sufficient reason exists therefor, revoke any reference to such a board.

(b) Conference with State commissions regarding rate structure, costs, etc.

The Commission may confer with any State commission regarding rate structures, costs, accounts, charges, practices, classifications, and regulations of natural-gas companies; and the Commission is authorized, under such rules and regulations as it shall prescribe, to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this chapter to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.

(c) Information and reports available to State commissions

The Commission shall make available to the several State commissions such information and reports as may be of assistance in State regulation of natural-gas companies. Whenever the Commission can do so without prejudice to the efficient and proper conduct of its affairs, it may, upon request from a State commission, make available to such State commission as witnesses any of its trained rate, valuation, or other experts, subject to reimbursement of the compensation and traveling expenses of such witnesses. All sums collected hereunder shall be credited to the appropriation from which the amounts were expended in carrying out the provisions of this subsection.

(June 21, 1938, ch. 556, § 17, 52 Stat. 830.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Power Commission, with certain reservations, to the chairman of such commission, see Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 717q. Appointment of officers and employees

The Commission is authorized to appoint and fix the compensation of such officers, attorneys, examiners, and experts as may be necessary for carrying out its functions under this chapter; and the Commission may, subject to civil-service laws, appoint such other officers and employees as are necessary for carrying out such functions and fix their salaries in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(June 21, 1938, ch. 556, § 18, 52 Stat. 831; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972.)

REFERENCES IN TEXT

The civil-service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

CODIFICATION

Provisions that authorized the Commission to appoint and fix the compensation of such officers, attorneys, examiners, and experts as may be necessary for carrying out its functions under this chapter "without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States" are omitted as obsolete and superseded.

As to the compensation of such personnel, sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed by Pub. L. 89-554, Sept. 6, 1966, § 8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5. Section 5102 of Title 5 now contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Civil Service Commission to determine the applicability to specific positions and employees.

Such appointments are now subject to the civil service laws unless specifically excepted by those laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5, Government Organization and Employees.

"Chapter 51 and subchapter III of chapter 53 of title 5" were substituted for "the Classification Act of 1949, as amended" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1949—Act Oct. 28, 1949, struck out the "Classification Act of 1923" and inserted in lieu thereof "Classification Act of 1949".

REPEALS

Act Oct. 28, 1949, ch. 782, § 1106(a), 63 Stat. 972, set out in the credit of this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Power Commission, with certain reservations, to the chairman of such commission, see Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 717r. Rehearing and review

(a) Application for rehearing; time

Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b) of this section, the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

(b) Review of Commission order

Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which is supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(c) Stay of Commission order

The filing of an application for rehearing under subsection (a) of this section shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(June 21, 1938, ch. 556, § 19, 52 Stat. 831; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Aug. 28, 1958, Pub. L. 85-791, § 19, 72 Stat. 947.)

CODIFICATION

In subsec. (b), "section 1254 of title 28" was substituted for "sections 239 and 240 of the Judicial Code, as amended [28 U.S.C. 346, 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85-791, § 19(a), added sentence providing that until record in a proceeding has been filed in a court of appeals, Commission may modify or set aside any finding or order issued by it.

Subsec. (b). Pub. L. 85-791, § 19(b), in second sentence, substituted "transmitted by the clerk of the court to" for "served upon", substituted "file with the court" for "certify and file with the court a transcript of", and inserted "as provided in section 2112 of title 28", and, in third sentence, substituted "petition" for "transcript", and "jurisdiction, which upon the filing of the record with it shall be exclusive" for "exclusive jurisdiction".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, which substituted "court of appeals" for "circuit court of appeals".

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Power Commission, with certain reservations, to the chairman of such commission, see Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 717s. Enforcement of chapter

(a) Action in district court for injunction

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this chapter, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper district court of the United States, or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this chapter or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices or concerning apparent violations of the Federal antitrust laws to the Attorney General, who, in his discretion, may institute the necessary criminal proceedings.

(b) Mandamus

Upon application of the Commission the district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder.

(c) Employment of attorneys by Commission

The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work, or for proper representation of the public interest in investigations made by it, or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for or represent the Commission in any case in court; and the expenses of such employment shall be paid out of the appropriation for the Commission.

(June 21, 1938, ch. 556, § 20, 52 Stat. 832; June 25, 1948, ch. 646, § 1, 62 Stat. 875, 895.)

REFERENCES IN TEXT

The Federal antitrust laws, referred to in subsec. (a), are classified generally to chapter 1 (§ 1 et seq.) of this title.

CODIFICATION

The words "the District Court of the United States for the District of Columbia" in subsec. (a) following "district court of the United States" and in subsec. (b) following "district courts of the United States" have been deleted as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of title 28 which states that "The District of Columbia constitutes one judicial district".

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Power Commission, with certain reservations, to the chairman of such commission, see Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

Judgments, see rule 54.

Mandamus as abolished but relief yet available by appropriate action or motion under the rules, see rule 81.

§ 717t. General penalties

(a) Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing in this chapter prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this chapter required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both.

(b) Any person who willfully and knowingly violates any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this chapter, shall, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine of not exceeding $500 for each and every day during which such offense occurs.

(June 21, 1938, ch. 556, § 21, 52 Stat. 833.)

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Power Commission, with certain reservations, to the chairman of such commission, see Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

§ 717u. Jurisdiction of offenses; enforcement of liabilities and duties

The District Courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules, regulations, and orders thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder. Any criminal proceeding shall be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this chapter or any rule, regulation, or order thereunder may be brought in any such district or in the district wherein the defendant is an inhabitant, and process in such cases may be served wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, and 1292 of title 28. No costs shall be assessed against the Commission in any judicial proceeding by or against the Commission under this chapter.

(June 21, 1938, ch. 556, § 22, 52 Stat. 833; June 25, 1948, ch. 646, § 1, 62 Stat. 875, 895.)

CODIFICATION

The words "the District Court of the United States for the District of Columbia" following "The District Courts of the United States" have been deleted as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district" and section 88 of title 28 which states that "The District of Columbia constitutes one judicial district".

"Sections 1254, 1291, and 1292 of title 28", referred to in text, were substituted for "sections 128 and 240 of the Judicial Code, as amended [28 U.S.C. 225 and 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Power Commission, with certain reservations, to the chairman of such commission, see Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Venue of district courts, see section 1391 et seq. of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

One form of action, see rule 2.

Process, see rule 4.

Rules as governing the procedure in all suits of a civil nature whether cognizable as cases at law or in equity, see rule 1.

FEDERAL RULES OF CRIMINAL PROCEDURE

Continuation of section under rule 18, see note by Advisory Committee under rule 18, Title 18, Appendix, Crimes and Criminal Procedure.

§ 717v. Separability of provisions

If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the chapter, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(June 21, 1938, ch. 556, § 23, 52 Stat. 833.)

§ 717w. Short title

This chapter may be cited as the "Natural Gas Act."

(June 21, 1938, ch. 556, § 24, 52 Stat. 833.)

CHAPTER 15C—ALASKA NATURAL GAS TRANSPORTATION

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§ 719. Congressional findings

The Congress finds and declares that—

(1) a natural gas supply shortage exists in the contiguous States of the United States;

(2) large reserves of natural gas in the State of Alaska could help significantly to alleviate this supply shortage;

(3) the expeditious construction of a viable natural gas transportation system for delivery of Alaska natural gas to United States markets is in the national interest; and

(4) the determinations whether to authorize a transportation system for delivery of Alaska natural gas to the contiguous States and, if so, which system to select, involve questions of the utmost importance respecting national energy policy, international relations, national security, and economic and environmental impact, and therefore should appropriately be addressed by the Congress and the President in addition to those Federal officers and agencies assigned functions under law pertaining to the selection, construction, and initial operation of such a system.

(Pub. L. 94-586, § 2, Oct. 22, 1976, 90 Stat. 2903.)

EXPIRATION DATE

Section 20 of Pub. L. 94-586 provided that: "This Act [this chapter] shall terminate in the event that no decision of the President takes effect under section 8 of this Act [section 719f of this title], such termination to occur at the end of the last day on which a decision could be, but is not, approved under such section."

SHORT TITLE

Section 1 of Pub. L. 94-586 provided that: "This Act [enacting this chapter, provisions set out as notes under this section, and provisions set out as a note under section 1651 of Title 43, Public Lands] may be cited as the 'Alaska Natural Gas Transportation Act of 1976'."

ANTITRUST STUDY

Section 19 of Pub. L. 94-586 provided that: "The Attorney General of the United States is authorized and directed to conduct a thorough study of the antitrust issues and problems relating to the production and transportation of Alaska natural gas and, not later than six months following the date of enactment of this Act [Oct. 22, 1976], to complete such study and submit to the Congress a report containing his findings and recommendations with respect thereto."

§ 719a. Congressional statement of purpose

The purpose of this chapter is to provide the means for making a sound decision as to the selection of a transportation system for delivery of Alaska natural gas to the contiguous States for construction and initial operation by providing for the participation of the President and the Congress in the selection process, and, if such a system is approved under this chapter, to expedite its construction and initial operation by (1) limiting the jurisdiction of the courts to review the actions of Federal officers or agencies taken pursuant to the direction and authority of this chapter, and (2) permitting the limitation of administrative procedures and effecting the limitation of judicial procedures related to such actions. To accomplish this purpose it is the intent of the Congress to exercise its constitutional powers to the fullest extent in the authorizations and directions herein made, and particularly with respect to the limitation of judicial review of actions of Federal officers or agencies taken pursuant thereto.

(Pub. L. 94-586, § 3, Oct. 22, 1976, 90 Stat. 2903.)

§ 719b. Definitions

As used in this chapter:

(1) the term "Alaska natural gas" means natural gas derived from the area of the State of Alaska generally known as the North Slope of Alaska, including the Continental Shelf thereof;

(2) the term "Commission" means the Federal Power Commission;

(3) the term "Secretary" means the Secretary of the Interior;

(4) the term "provision of law" means any provision of a Federal statute or rule, regulation, or order issued thereunder; and

(5) the term "approved transportation system" means the system for the transportation of Alaska natural gas designated by the President pursuant to section 719e(a) or 719f(b) of this title and approved by joint resolution of the Congress pursuant to section 719f of this title.

(Pub. L. 94-586, § 4, Oct. 22, 1976, 90 Stat. 2904.)

§ 719c. Federal Power Commission reviews and reports

(a) Proceedings: suspension, vacation or removal of suspension; issuance of certificate of convenience and necessity

(1) Notwithstanding any provision of the Natural Gas Act or any other provision of law, the Commission shall suspend all proceedings pending before the Commission on October 22, 1976, relating to a system for the transportation of Alaska natural gas as soon as the Commission determines to be practicable after such date,

and the Commission may refuse to act on any application, amendment thereto, or other requests for action under the Natural Gas Act relating to a system for the transportation of Alaska natural gas until such time as (A) a decision of the President designating such a system for approval takes effect pursuant to section 719f of this title, (B) no such decision takes effect pursuant to section 719f of this title, or (C) the President decides not to designate such a system for approval under section 719f of this title and so advises the Congress pursuant to section 719e of this title.

(2) In the event a decision of the President designating such a system takes effect pursuant to this chapter, the Commission shall forthwith vacate proceedings suspended under paragraph (1) and, pursuant to section 719g of this title and in accordance with the President's decision, issue a certificate of public convenience and necessity respecting such system.

(3) In the event such a decision of the President does not take effect pursuant to this chapter or the President decides not to designate such a system and so advises the Congress pursuant to section 719e of this title, the suspension provided for in paragraph (1) of this subsection shall be removed.

(b) Recommendation; submittal to President; rule for presentation of data, views, and arguments; Federal agency cooperation

(1) The Commission shall review all applications for the issuance of a certificate of public convenience and necessity relating to the transportation of Alaska natural gas pending on October 22, 1976, and any amendments thereto which are timely made, and after consideration of any alternative transportation system which the Commission determines to be reasonable, submit to the President not later than May 1, 1977, a recommendation concerning the selection of such a transportation system. Such recommendation may be in the form of a proposed certificate of public convenience and necessity, or in such other form as the Commission determines to be appropriate, or may recommend that no decision respecting the selection of such a transportation system be made at this time or pursuant to this chapter. Any recommendation that the President approve a particular transportation system shall (A) include a description of the nature and route of the system, (B) designate a person to construct and operate the system, which person shall be the applicant, if any, which filed for a certificate of public convenience and necessity to construct and operate such system, (C) if such recommendation is for an all-land pipeline transportation system, or a transportation system involving water transportation, include provision for new facilities to the extent necessary to assure direct pipeline delivery of Alaska natural gas contemporaneously to points both east and west of the Rocky Mountains in the lower continental United States.

(2) The Commission may, by rule, provide for the presentation of data, views, and arguments before the Commission or a delegate of the Commission pursuant to such procedures as the Commission determines to be appropriate to carry out its responsibilities under paragraph (1) of this subsection. Such a rule shall, to the extent determined by the Commission, apply, notwithstanding any provision of law that would otherwise have applied to the presentation of data, views, and arguments.

(3) The Commission may request such information and assistance from any Federal agency as the Commission determines to be necessary or appropriate to carry out its responsibilities under this chapter. Any Federal agency requested to submit information or provide assistance shall submit such information to the Commission at the earliest practicable time after receipt of a Commission request.

(c) Report; public availability; factors to be discussed

The Commission shall accompany any recommendation under subsection (b)(1) of this section with a report, which shall be available to the public, explaining the basis for such recommendation and including for each transportation system reviewed or considered a discussion of the following:

(1) for each year of the 20-year period which begins with the first year following October 22, 1976, the estimated—

(A) volumes of Alaska natural gas which would be available to each region of the United States directly, or indirectly by displacement or otherwise, and

(B) transportation costs and delivered prices of any such volumes of gas by region;

(2) the effects of each of the factors described in subparagraphs (A) and (B) of paragraph (1) on the projected natural gas supply and demand for each region of the United States and on the projected supplies of alternative fuels available by region to offset shortages of natural gas occurring in such region for each such year;

(3) the impact upon competition;

(4) the extent to which the system provides a means for the transportation to United States markets of natural resources or other commodities from sources in addition to the Prudhoe Bay Reserve;

(5) environmental impacts;

(6) safety and efficiency in design and operation and potential for interruption in deliveries of Alaska natural gas;

(7) construction schedules and possibilities for delay in such schedules or for delay occurring as a result of other factors;

(8) feasibility of financing;

(9) extent of reserves, both proven and probable and their deliverability by year for each year of the 20-year period which begins with the first year following October 22, 1976;

(10) the estimate of the total delivered cost to users of the natural gas to be transported by the system by year for each year of the 20-year period which begins with the first year following October 22, 1976;

(11) capability and cost of expanding the system to transport additional volumes of natural gas in excess of initial system capacity;

(12) an estimate of the capital and operating costs, including an analysis of the reliability of such estimates and the risk of cost overruns; and

(13) such other factors as the Commission determines to be appropriate.

(d) Recommendation not based upon Canadian pipeline system decision

The recommendation by the Commission pursuant to this section shall not be based upon the fact that the Government of Canada or agencies thereof have not, by then rendered a decision as to authorization of a pipeline system to transport Alaska natural gas through Canada.

(e) Transportation system: recommendation, submittal to President; environmental impact statement: submittal to President

If the Commission recommends the approval of a particular transportation system, it shall submit to the President with such recommendation (1) an identification of those facilities and operations which are proposed to be encompassed within the term "construction and initial operation" in order to define the scope of directions contained in section 719g of this title and (2) the terms and conditions permitted under the Natural Gas Act [15 U.S.C. 717 et seq.], which the Commission determines to be appropriate for inclusion in a certificate of public convenience and necessity to be issued respecting such system. The Commission shall submit to the President contemporaneously with its' report an environmental impact statement prepared respecting the recommended system, if any, and each environmental impact statement which may have been prepared respecting any other system reported on under this section.

(Pub. L. 94-586, § 5, Oct. 22, 1976, 90 Stat. 2904.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsecs. (a)(1) and (e), is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this Act to the Code, see section 717w of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 719d, 719e, 719f of this title.

§ 719d. Federal and State officer or agency and other interested persons' reports

(a) Federal officer or agency comments; submittal to President; public availability

Not later than July 1, 1977, any Federal officer or agency may submit written comments to the President with respect to the recommendation and report of the Commission and alternative methods for transportation of Alaska natural gas for delivery to the contiguous States. Such comments shall be made available to the public by the President when submitted to him, unless expressly exempted from this requirement in whole or in part by the President, under section 552(b)(1) of title 5. Any such written comment shall include information within the competence of such Federal officer or agency with respect to—

(1) environmental considerations, including air and water quality and noise impacts;

(2) the safety of the transportation systems;

(3) international relations, including the status and time schedule for any necessary Canadian approvals and plans;

(4) national security, particularly security of supply;

(5) sources of financing for capital costs;

(6) the impact upon competition;

(7) impact on the national economy, including regional natural gas requirements; and

(8) relationship of the proposed transportation system to other aspects of national energy policy.

(b) State officer or agency and other interested persons' comments; submittal to President

Not later than July 1, 1977, the Governor of any State, any municipality, State utility commission, and any other interested person may submit to the President such written comments with respect to the recommendation and report of the Commission and alternative systems for delivering Alaska natural gas to the contiguous States as they determine to be appropriate.

(c) Report of Federal officer or agency to the President

Not later than July 1, 1977, each Federal officer or agency shall report to the President with respect to actions to be taken by such officer or agency under section 719g(a) of this title relative to each transportation system reported on by the Commission under section 719c(c) of this title and shall include such officer's or agency's recommendations with respect to any provision of law to be waived pursuant to section 719f(g) of this title in conjunction with any decision of the President which designates a system for approval.

(d) Report of Council on Environmental Quality to the President

Following receipt by the President of the Commission's recommendations, the Council on Environmental Quality shall afford interested persons an opportunity to present oral and written data, views, and arguments respecting the environmental impact statements submitted by the Commission under section 719c(e) of this title. Not later than July 1, 1977, the Council on Environmental Quality shall submit to the President a report, which shall be contemporaneously made available by the Council to the public, summarizing any data, views, and arguments received and setting forth the Council's views concerning the legal and factual sufficiency of each such environmental impact statement and other matters related to environmental impact as the Council considers to be relevant.

(Pub. L. 94-586, § 6, Oct. 22, 1976, 90 Stat. 2906.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 719e of this title.

§ 719e. Presidential decision and report

(a) Dateline for decision; transmission to Congress, delay: notice to Congress; contents of decision; chairman, appointment; Federal inspector of construction: duties, including establishment of joint surveillance and monitoring agreement

(1) As soon as practicable after July 1, 1977, but not later than September 1, 1977, the President shall issue a decision as to whether a transportation system for delivery of Alaska natural gas should be approved under this

chapter. If he determines such a system should be so approved, his decision shall designate such a system for approval pursuant to section 719f of this title and shall be consistent with section 719c(b)(1)(C) of this title to assure delivery of Alaska natural gas to points both east and west of the Rocky Mountains in the continental United States. The President in making his decision shall take into consideration the Commission's recommendation pursuant to section 719c of this title, the report under section 719c(c) of this title, and any comments submitted under section 719d of this title; and his decision to designate a system for approval shall be based on his determination as to which system, if any, best serves the national interest.

(2) The President, for a period of up to 90 additional calendar days after September 1, 1977, may delay the issuance of his decision and transmittal thereof to the House of Representatives and the Senate, if he determines (A) that there exists no environmental impact statement prepared relative to a system he wishes to consider or that any prepared environmental impact statement relative to a system he wishes to consider is legally or factually insufficient, or (B) that the additional time is otherwise necessary to enable him to make a sound decision on an Alaska natural gas transportation system. The President shall promptly, but in no case any later than September 1, 1977, notify the House of Representatives and the Senate if he so delays his decision and submit a full explanation of the basis of any such delay.

(3) If, on or before May 1, 1977, the President determines to delay issuance and transmittal of his decision to the House of Representatives and the Senate pursuant to paragraph (2) of this subsection, he may authorize a delay of not more than 90 days in the date of taking of any action specified in sections 719c and 719d of this title. The President shall promptly notify the House of Representatives and the Senate of any such authorization of delay and submit a full explanation of the basis of any such authorization.

(4) If the President determines to designate for approval a transportation system for delivery of Alaska natural gas to the contiguous States, he shall in such decision—

(A) describe the nature and route of the system designated for approval;

(B) designate a person to construct and operate such a system, which person shall be the applicant, if any, which filed for a certificate of public convenience and necessity to construct and operate such system;

(C) identify those facilities, the construction of which, and those operations, the conduct of which, shall be encompassed within the term "construction and initial operation" for purposes of defining the scope of the directions contained in section 719g of this title, taking into consideration any recommendation of the Commission with respect thereto; and

(D) identify those provisions of law, relating to any determination of a Federal officer or agency as to whether a certificate, permit, right-of-way, lease, or other authorization shall be issued or be granted, which provisions the President finds (i) involve determinations which are subsumed in his decision and (ii) require waiver pursuant to section 719f(g) of this title in order to permit the expeditious construction and initial operation of the transportation system.

(5) After a decision of the President designating an Alaska natural gas transportation system takes effect under section 719f of this title, the President shall appoint an officer of the United States, with the advice and consent of the Senate, or designate a board (consisting of such an officer, so appointed with the advice and consent of the Senate, as chairman and such other individuals as the President determines appropriate to serve on such board by reason of background, experience, or position) to serve as Federal inspector of construction of such transportation system, except that no such individual or officer may have a financial interest in the approved transportation system. Upon enactment of a joint resolution pursuant to section 719f of this title approving such a system the Federal inspector shall—

(A) establish a joint surveillance and monitoring agreement, approved by the President, with the State of Alaska similar to that in effect during construction of the trans-Alaska oil pipeline to monitor the construction of the approved transportation system within the State of Alaska;

(B) monitor compliance with applicable laws and the terms and conditions of any applicable certificate, rights-of-way, permit, lease, or other authorization issued or granted under section 719g of this title;

(C) monitor actions taken to assure timely completion of construction schedules and the achievement of quality of construction, cost control, safety, and environmental protection objectives and the results obtained therefrom;

(D) have the power to compel, by subpena if necessary, submission of such information as he deems necessary to carry out his responsibilities; and

(E) keep the President and the Congress currently informed on any significant departures from compliance and issue quarterly reports to the President and the Congress concerning existing or potential failures to meet construction schedules or other factors which may delay the construction and initial operation of the system and the extent to which quality of construction, cost control, safety and environmental protection objectives have been achieved.

(6) If the President determines to designate for approval a transportation system for delivery of Alaska natural gas to the contiguous States, he may identify in such decision such terms and conditions permissible under existing law as he determines appropriate for inclusion with respect to any issuance or authorization directed to be made pursuant to section 719g of this title.

(b) Transmittal to Congress

The decision of the President made pursuant to subsection (a) of this section shall be transmitted to both Houses of Congress and shall be considered received by such Houses for the purposes of this section on the first day on which both are in session occurring after such decision is transmitted. Such decision shall be accompanied by a report explaining in detail the basis for his decision with specific reference to the factors set forth in sections 719c(c) and 719d(a) of this title, and the reasons for any revision, modification of, or substitution for, the Commission recommendation.

(c) Financial analysis

The report of the President pursuant to subsection (b) of this section shall contain a financial analysis for the transportation system designated for approval. Unless the President finds and states in his report submitted pursuant to this section that he reasonably anticipates that the system designated by him can be privately financed, constructed, and operated, his report shall also be accompanied by his recommendation concerning the use of existing Federal financing authority or the need for new Federal financing authority.

(d) Views and objectives involving intergovernmental and international cooperation

In making his decision under subsection (a) of this section the President shall inform himself, through appropriate consultation, of the views and objectives of the States, the Government of Canada, and other governments with respect to those aspects of such a decision that may involve intergovernmental and international cooperation among the Government of the United States, the States, the Government of Canada, and any other government.

(e) Decision effective as provided in section 719f of this title; financing authority unaffected

If the President determines to designate a transportation system for approval, the decision of the President shall take effect as provided in section 719f of this title, except that the approval of a decision of the President shall not be construed as amending or otherwise affecting the laws of the United States so as to grant any new financing authority as may have been identified by the President pursuant to subsection (c) of this section.

(Pub. L. 94-586, § 7, Oct. 22, 1976, 90 Stat. 2907.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 719b, 719c, 719f, 719m of this title.

§ 719f. Congressional review

(a) Effectiveness of decision designating transportation system for approval upon enactment of joint resolution

Any decision under section 719e(a) of this title or subsection (b) of this section designating for approval a transportation system for the delivery of Alaska natural gas shall take effect upon enactment of a joint resolution within the first period of 60 calendar days of continuous session of Congress beginning on the date after the date of receipt by the Senate and House of Representatives of a decision transmitted pursuant to section 719e(b) of this title or subsection (b) of this section.

(b) New decision: statement of reasons for proposal; transmittal to Congress

If the Congress does not enact such a joint resolution within such 60-day period, the President, not later than the end of the 30th day following the expiration of the 60-day period, may propose a new decision and shall provide a detailed statement concerning the reasons for such proposal. The new decision shall be submitted in accordance with section 719e(a) of this title and transmitted to the House of Representatives and the Senate on the same day while both are in session and shall take effect pursuant to subsection (a) of this section. In the event that a resolution respecting the President's decision was defeated by vote of either House, no new decision may be transmitted pursuant to this subsection unless such decision differs in a material respect from the previous decision.

(c) Sessions of Congress

For purposes of this section—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day calendar period.

(d) Rules under rulemaking powers of Congress; change of rules; "resolution" defined; referral to congressional committees; debate limitation; motion for consideration of resolution; debate on resolution; nondebatable motions and appeals from procedural decisions

(1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of each House of Congress, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as those rules relate to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.

(2) For purposes of this chapter, the term "resolution" means (A) a joint resolution, the resolving clause of which is as follows: "That the House of Representatives and Senate approve the Presidential decision on an Alaska natural gas transportation system submitted to the Congress on————, 19 , and find that any environmental impact statements prepared relative to such system and submitted with the President's decision are in compliance with the Natural[1] Environmental Policy Act of 1969."; the blank space therein shall be filled with the date on which the President submits his decision to the House of Representatives and the Senate; or (B) a joint resolution described in subsection (g) of this section.

(3) A resolution once introduced with respect to a Presidential decision on an Alaska natural gas transportation system shall be referred to

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[1] So in original, should be "National".

one or more committees (and all resolutions with respect to the same Presidential decision on an Alaska natural gas transportation system shall be referred to the same committee or committees) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If any committee to which a resolution with respect to a Presidential decision on an Alaska natural gas transportation system has been referred has not reported it at the end of 30 calendar days after its referral, it shall be in order to move either to discharge such committee from further consideration of such resolution or to discharge such committee from consideration of any other resolution with respect to such Presidential decision on an Alaska natural gas transportation system which has been referred to such committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same Presidential decision on an Alaska natural gas transportation system), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential decision on an Alaska natural gas transportation system.

(5)(A) When any committee has reported, or has been discharged from further consideration of, a resolution, but in no case earlier than 30 days after the date of receipt of the President's decision to the Congress, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution described in paragraph (2)(A) of this subsection shall be limited to not more than 10 hours and on any resolution described in subsection (g) of this section to one hour. This time shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to or, thereafter within such 60-day period, to consider any other resolution respecting the same Presidential decision.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedures relating to a resolution shall be decided without debate.

(e) Presidential finding respecting and supplementation or modification of environmental impact statement; submittal to congressional committees

The President shall find that any required environmental impact statement relative to the Alaska natural gas transportation system designated for approval by the President has been prepared and that such statement is in compliance with the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.]. Such finding shall be set forth in the report of the President submitted under section 719e of this title. The President may supplement or modify the environmental impact statements prepared by the Commission or other Federal officers or agencies. Any such environmental impact statement shall be submitted contemporaneously with the transmittal to the Senate and House of Representatives of the President's decision pursuant to section 719e(b) of this title or subsection (b) of this section.

(f) Report of Commission: submittal to Congress; Council on Environmental Quality: hearings, report, submittal to Congress; congressional committee hearings

Within 20 days of the transmittal of the President's decision to the Congress under section 719e(b) of this title or under subsection (b) of this section, (1) the Commission shall submit to the Congress a report commenting on the decision and including any information with regard to that decision which the Commission considers appropriate, and (2) the Council on Environmental Quality shall provide an opportunity to any interested person to present oral and written data, views, and arguments on any environmental impact statement submitted by the President relative to any system designated by him for approval which is different from any system reported on by the Commission under section 719c(c) of this title, and shall submit to the Congress a report summarizing any such views received. The committees in each House of Congress to which a resolution has been referred under subsection (d)(3) of this section shall conduct hearings on the Council's report and include in any report of the committee respecting such resolution the findings of the committee on the legal and factual sufficiency of any environmental impact statement submitted by the President relative to any system designated by him for approval.

(g) Waiver; submittal to Congress

(1) At any time after a decision designating a transportation system is submitted to the Congress pursuant to this section, if the President finds that any provision of law applicable to actions to be taken under subsection (a) or (c) of section 719g of this title require waiver in order to permit expeditious construction and initial operation of the approved transportation system, the President may submit such proposed waiver to both Houses of Congress.

(2) Such provision shall be waived with respect to actions to be taken under subsection (a) or (c) of section 719g of this title upon en-

actment of a joint resolution pursuant to the procedures specified in subsections (c) and (d) of this section (other than subsection (d)(2) thereof) within the first period of 60 calendar days of continuous session of Congress beginning on the date after the date of receipt by the Senate and House of Representatives of such proposal.

(3) The resolving clause of the joint resolution referred to in this subsection is as follows: "That the House of Representatives and Senate approve the waiver of the provision of law ( ) as proposed by the President, submitted to the Congress on , 19 ." The first blank space therein being filled with the citation to the provision of law and the second blank space therein being filled with the date on which the President submits his decision to the House of Representatives and the Senate.

(4) In the case of action with respect to a joint resolution described in this subsection, the phrase "a waiver of a provision of law" shall be substituted in subsection (d) of this section for the phrase "the Alaska natural gas transportation system.".

(Pub. L. 94–586, § 8, Oct. 22, 1976, 90 Stat. 2909.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (d)(2) and (e), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 851, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 719b, 719c, 719d, 719e, 719g, 719h of this title.

§ 719g. Transportation system certificates, rights-of-way, permits, leases, or other authorizations

(a) Earliest practicable date for issuance or grant of authorizations

To the extent that the taking of any action which is necessary or related to the construction and initial operation of the approved transportation system requires a certificate, right-of-way, permit, lease, or other authorization to be issued or granted by a Federal officer or agency, such Federal officer or agency shall—

(1) to the fullest extent permitted by the provisions of law administered by such officer or agency, but

(2) without regard to any provision of law which is waived pursuant to section 719f(g) of this title issue or grant such certificates, permits, rights-of-way, leases, and other authorizations at the earliest practicable date.

(b) Expedition and precedence of actions on applications or requests

All actions of a Federal officer or agency with respect to consideration of applications or requests for the issuance or grant of a certificate, right-of-way, permit, lease, or other authorization to which subsection (a) of this section applies shall be expedited and any such application or request shall take precedence over any similar applications or requests of the Federal officer or agency.

(c) Required terms and conditions

Any certificate, right-of-way, permit, lease, or other authorization issued or granted pursuant to the direction under subsection (a) of this section shall include the terms and conditions required by law unless waived pursuant to a resolution under section 719f(g) of this title, and may include terms and conditions permitted by law, except that with respect to terms and conditions permitted but not required, the Federal officer or agency, notwithstanding any such other provision of law, shall have no authority to include terms and conditions as would compel a change in the basic nature and general route of the approved transportation system or those the inclusion of which would otherwise prevent or impair in any significant respect the expeditious construction and initial operation of such transportation system.

(d) Additions to, and amendment or abrogation of authorizations; exception

Any Federal officer or agency, with respect to any certificate, permit, right-of-way, lease, or other authorization issued or granted by such officer or agency, may, to the extent permitted under laws administered by such officer or agency add to, amend or abrogate any term or condition included in such certificate, permit, right-of-way, lease, or other authorization except that with respect to any such action which is permitted but not required by law, such Federal officer or agency, notwithstanding any such other provision of law, shall have no authority to take such action if the terms and conditions to be added, or as amended, would compel a change in the basic nature and general route of the approved transportation system or would otherwise prevent or impair in any significant respect the expeditious construction and initial operation of such transportation system.

(e) Appropriate terms and conditions

Any Federal officer or agency to which subsection (a) of this section applies, to the extent permitted under laws administered by such officer or agency, shall include in any certificate, permit, right-of-way, lease, or authorization issued or granted those terms and conditions identified in the President's decision as appropriate for inclusion except that the requirement to include such terms and conditions shall not limit the Federal officer or agency's authority under subsection (d) of this section.

(Pub. L. 94–586, § 9, Oct. 22, 1976, 90 Stat. 2912.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 719c, 719d, 719e, 719f, 719h, 719k of this title.

§ 719h. Judicial review

(a) Exclusiveness of remedy

Notwithstanding any other provision of law, the actions of Federal officers or agencies taken pursuant to section 719g of this title, shall not be subject to judicial review except as provided in this section.

(b) Limitations for filing claims

(1) Claims alleging the invalidity of this chapter may be brought not later than the 60th day

following the date a decision takes effect pursuant to section 719f of this title.

(2) Claims alleging that an action will deny rights under the Constitution of the United States, or that an action is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right may be brought not later than the 60th day following the date of such action, except that if a party shows that he did not know of the action complained of, and a reasonable person acting in the circumstances would not have known, he may bring a claim alleging the invalidity of such action on the grounds stated above not later than the 60th day following the date of his acquiring actual or constructive knowledge of such action.

(c) Exclusive jurisdiction of the Special Court; barred claims; precedence and expedition of proceedings; decision; conclusiveness of environmental impact statements

(1) A claim under subsection (b) of this section shall be barred unless a complaint is filed prior to the expiration of such time limits in the United States Court of Appeals for the District of Columbia acting as a Special Court. Such court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States, or any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any such claim in any proceeding instituted prior to or on or after October 22, 1976.

(2) Any such proceeding shall be assigned for hearing and completed at the earliest possible date, shall, to the greatest extent practicable, take precedence over all other matters pending on the docket of the court at that time, and shall be expedited in every way by such court and such court shall render its decision relative to any claim within 90 days from the date such claim is brought unless such court determines that a longer period of time is required to satisfy requirements of the United States Constitution.

(3) The enactment of a joint resolution under section 719f of this title approving the decision of the President shall be conclusive as to the legal and factual sufficiency of the environmental impact statements submitted by the President relative to the approved transportation system and no court shall have jurisdiction to consider questions respecting the sufficiency of such statements under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

(Pub. L. 94-586, § 10, Oct. 22, 1976, 90 Stat. 2913.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c)(3), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 851, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables volume.

§ 719i. Supplemental enforcement authority

(a) Compliance order or civil action

In addition to remedies available under other applicable provisions of law, whenever any Federal officer or agency determines that any person is in violation of any applicable provision of law administered or enforceable by such officer or agency or any rule, regulation, or order under such provision, including any term or condition of any certificate, right-of-way, permit, lease, or other authorization, issued or granted by such officer or agency, such officer or agency may—

(1) issue a compliance order requiring such person to comply with such provision or any rule, regulation, or order thereunder, or

(2) bring a civil action in accordance with subsection (c) of this section.

(b) Specificity of compliance order

Any order issued under subsection (a) of this section shall state with reasonable specificity the nature of the violation and a time of compliance, not to exceed 30 days, which the officer or agency, as the case may be, determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(c) Appropriate relief and jurisdiction of civil action

Upon a request of such officer or agency, as the case may be, the Attorney General may commence a civil action for appropriate relief, including a permanent or temporary injunction or a civil penalty not to exceed $25,000 per day for violations of the compliance order issued under subsection (a) of this section. Any action under this subsection may be brought in any district court of the United States for the district in which the defendant is located, resides, or is doing business, and such court shall have jurisdiction to restrain such violation, require compliance, or impose such penalty or give ancillary relief.

(Pub. L. 94-586, § 11, Oct. 22, 1976, 90 Stat. 2914.)

§ 719j. Export limitations

Any exports of Alaska natural gas shall be subject to the requirements of the Natural Gas Act [15 U.S.C. 717 et seq.] and section 103 of the Energy Policy and Conservation Act [42 U.S.C. 6212], except that in addition to the requirements of such Acts, before any Alaska natural gas in excess of 1,000 Mcf per day may be exported to any nation other than Canada or Mexico, the President must make and publish an express finding that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

(Pub. L. 94-586, § 12, Oct. 22, 1976, 90 Stat. 2914.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in text, is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this Act to the Code, see section 717w of this title and Tables volume.

The Energy Policy and Conservation Act, referred to in text, is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, which is classified principally to chapter 77 (§ 6201 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of Title 42 and Tables volume.

§ 719k. Equal access to facilities

(a) There shall be included in the terms of any certificate, permit, right-of-way, lease, or other authorization issued or granted pursuant to the directions contained in section 719g of this title, a provision that no person seeking to transport natural gas in the Alaska natural gas transportation system shall be prevented from doing so or be discriminated against in the terms and conditions of service on the basis of degree of ownership, or lack thereof, of the Alaska natural gas transportation system.

(b) The State of Alaska is authorized to ship its royalty gas on the approved transportation system for use within Alaska and, to the extent its contracts for the sale of royalty gas so provide, to withdraw such gas from the interstate market for use within Alaska; the Federal Power Commission shall issue all authorizations necessary to effectuate such shipment and withdrawal subject to review by the Commission only of the justness and reasonableness of the rate charged for such transportation.

(Pub. L. 94-586, § 13, Oct. 22, 1976, 90 Stat. 2915.)

§ 719*l*. Antitrust laws

Nothing in this chapter, and no action taken hereunder, shall imply or effect an amendment to, or exemption from, any provision of the antitrust laws.

(Pub. L. 94-586, § 14, Oct. 22, 1976, 90 Stat. 2915.)

References in Text

The antitrust laws, referred to in text, are classified generally to Chapter 1 (§ 1 et seq.) of this title.

§ 719m. Authorization of appropriations

There is hereby authorized to be appropriated beginning in fiscal year 1978 and each fiscal year thereafter, such sums as may be necessary to carry out the functions of the Federal inspector appointed by the President with the advice and consent of the Senate under section 719e of this title.

(Pub. L. 94-586, § 15, Oct. 22, 1976, 90 Stat. 2915.)

§ 719n. Separability of provisions

If any provision of this chapter, or the application thereof, is held invalid, the remainder of this chapter shall not be affected thereby.

(Pub. L. 94-586, § 16, Oct. 22, 1976, 90 Stat. 2915.)

§ 719*o*. Civil rights; affirmative action of Federal officers and agencies; rules promulgation and enforcement

All Federal officers and agencies shall take such affirmative action as is necessary to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving, or participating in any activity conducted under, any certificates, permit, right-of-way, lease, or other authorization granted or issued pursuant to this chapter. The appropriate Federal officers and agencies shall promulgate such rules as are necessary to carry out the purposes of this section and may enforce this section, and any rules promulgated under this section through agency and department provisions and rules which shall be similar to those established and in effect under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.].

(Pub. L. 94-586, § 17, Oct. 22, 1976, 90 Stat. 2915.)

References in Text

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title VI of the Civil Rights Act of 1964 is classified to subchapter V (§ 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables volume.

CHAPTER 16—EMERGENCY RELIEF

§§ 721, 722. Omitted

Codification

Sections, acts May 12, 1933, ch. 30, §§ 1, 2, 48 Stat. 55, 56; Feb. 15, 1934, ch. 13, § 1, 49 Stat. 351, were enacted as temporary legislation during the economic emergency in 1933.

Supplementary Legislation

Legislation supplementary to the Federal Emergency Relief Act of 1933 was contained in the following acts, executive orders, and reorganization plans: Res. Apr. 8, 1935, ch. 48, 49 Stat. 115; Aug. 12, 1935, ch. 508, § 3, 49 Stat. 596; Aug. 24, 1935, ch. 641, § 55, 49 Stat. 781; Feb. 11, 1936, ch. 49, § 7, 49 Stat. 1134; Feb. 11, 1936, ch. 51, 49 Stat. 1135; June 22, 1936, ch. 689, title II, 49 Stat. 1608; Res. Feb. 24, 1937, ch. 17, 50 Stat. 21; June 29, 1937, 11 p.m., ch. 401, 50 Stat. 357; Mar. 2, 1938, ch. 38, 52 Stat. 83; June 21, 1938, ch. 554, 52 Stat. 817; Feb. 4, 1939, ch. 1, 53 Stat. 508; Res. Apr. 1, 1939, ch. 34, 53 Stat. 555; Apr. 13, 1939, ch. 62, 53 Stat. 578; Res. June 30, 1939, ch. 252, 53 Stat. 927; Apr. 6, 1940, ch. 77, 54 Stat. 99; June 26, 1940, ch. 428, title II, 54 Stat. 590; Res. June 26, 1940, ch. 432, 54 Stat. 611; June 27, 1940, ch. 437, title I, 54 Stat. 633; Oct. 9, 1940, ch. 780, title I, 54 Stat. 1035; Mar. 1, 1941, ch. 9, § 1, 55 Stat. 15; Apr. 5, 1941, ch. 40, § 1, 55 Stat. 110; July 1, 1941, ch. 266, 55 Stat. 396; July 1, 1941, ch. 269, title II, 55 Stat. 487; Dec. 17, 1941, ch. 591, 55 Stat. 810; June 27, 1942, ch. 450, § 1, 56 Stat. 410; July 2, 1942, ch. 475, title II, 56 Stat. 571; Res. July 2, 1942, ch. 479, 56 Stat. 634; June 22, 1943, ch. 138, 57 Stat. 161; June 26, 1943, ch. 145, title I, § 1, 57 Stat. 180; July 12, 1943, ch. 221, title VII, 57 Stat. 518; July 12, 1943, 4 p.m., E. W. T., ch. 229, title I, 57 Stat. 539, 540; Dec. 23, 1943, ch. 380, title I, 57 Stat. 615; June 28, 1944, ch. 302, title II, 58 Stat. 564; June 28, 1944, ch. 304, title I, 58 Stat. 602; Apr. 25, 1945, ch. 95, title I, § 1, 59 Stat. 80.

Ex. Ord. Nos. 7305, Feb. 28, 1936; 7334, Apr. 3, 1936, 1 F.R. 121; 7436, Aug. 21, 1936, 1 F.R. 1204; 7469, Oct. 13, 1936, 1 F.R. 1581; 7512, Dec. 16, 1936, 1 F.R. 2159; 7553, Feb. 17, 1937, 2 F.R. 338.

Reorg. Plan No. I of 1939, §§ 201, 206, 301, 305, 306, eff. July 1, 1939, 4 F.R. 2728 to 2730, 53 Stat. 1424 to 1428.

§ 723. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 648

Section, acts May 12, 1933, ch. 30, § 3, 46 Stat. 56; Feb. 15, 1934, ch. 13, § 1, 48 Stat. 351, was enacted as temporary legislation during the economic emergency in 1933.

§§ 724 to 728. Omitted

CODIFICATION

Sections, acts May 12, 1933, ch. 30, §§ 4 to 8, 48 Stat. 56 to 58, Feb. 15, 1934, ch. 13, § 1, 48 Stat. 351, were enacted as temporary legislation during the economic emergency in 1933.

CHAPTER 16A—EMERGENCY PETROLEUM ALLOCATION

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 766, 793, 796 of this title; title 42 sections 1857c-10, 6263, 6272, 6391.

§ 751. Congressional findings and declaration of purpose

(a) The Congress hereby determines that—

(1) shortages of crude oil, residual fuel oil, and refined petroleum products caused by inadequate domestic production, environmental constraints, and the unavailability of imports sufficient to satisfy domestic demand, now exist or are imminent;

(2) such shortages have created or will create severe economic dislocations and hardships, including loss of jobs, closing of factories and businesses, reduction of crop plantings and harvesting, and curtailment of vital public services, including the transportation of food and other essential goods; and

(3) such hardships and dislocations jeopardize the normal flow of commerce and constitute a national energy crisis which is a threat to the public health, safety, and welfare and can be averted or minimized most efficiently and effectively through prompt action by the Executive branch of Government.

(b) The purpose of this chapter is to grant to the President of the United States and direct him to exercise specific temporary authority to deal with shortages of crude oil, residual fuel oil, and refined petroleum products or dislocations in their national distribution system. The authority granted under this chapter shall be exercised for the purpose of minimizing the adverse impacts of such shortages or dislocations on the American people and the domestic economy.

(Pub. L. 93-159, § 2, Nov. 27, 1973, 87 Stat. 628.)

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 94-99, § 1, Sept. 29, 1975, 89 Stat. 481, provided that "This Act [amending section 753(g)(1) of this title and enacting provisions set out as notes under section 753 of this title] may be cited as the 'Emergency Petroleum Allocation Act of 1975'."

SHORT TITLE

Section 1 of Pub. L. 93-159 provided: "That this Act [enacting this chapter] may be cited as the 'Emergency Petroleum Allocation Act of 1973'."

DEFENSE DEPARTMENT REDUCTION IN CONSUMPTION OF PETROLEUM PRODUCTS; NATIONAL SECURITY AND ESSENTIAL TRAINING EXERCISES EXCEPTIONS

Pub. L. 93-155, Title VIII, § 811, Nov. 16, 1973, 87 Stat. 619, provided that: "The Congress finds that the Department of Defense, which will use, at its present rate of consumption, an estimated twelve billion gallons of petroleum products in 1973, is one of the largest single consumers of petroleum products in the world, and that a reduction in consumption of such products by the Department of Defense would aid materially in meeting the energy shortages which the United States now faces. It is, therefore, declared to be the sense of the Congress that the Department of Defense should implement a 10 per centum reduction of its consumption of petroleum products except where such a reduction would adversely affect the national security or essential training exercises."

§ 752. Definitions

For purposes of this chapter:

(1) The term "branded independent marketer" means a person who is engaged in the marketing or distributing of refined petroleum products pursuant to—

(A) an agreement or contract with a refiner (or a person who controls, is controlled by, or is under common control with such refiner) to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner (or any such person), or

(B) an agreement or contract under which any such person engaged in the marketing or distributing of refined petroleum products is granted authority to occupy premises owned, leased, or in any way controlled by a refiner (or person who controls, is controlled by, or is under common control with such refiner),

but who is not affiliated with, controlled by, or under common control with any refiner (other than by means of a supply contract, or an agreement or contract described in subparagraph (A) or (B)) and who does not control such refiner.

(2) The term "nonbranded independent marketer" means a person who is engaged in the marketing or distributing of refined petroleum products, but who (A) is not a refiner, (B) is not a person who controls, is controlled by, is under common control with, or is affiliated with a refiner (other than by

means of a supply contract), and (C) is not a branded independent marketer.

(3) The term "independent refiner" means a refiner who (A) obtained, directly or indirectly, in the calendar quarter which ended immediately prior to November 27, 1973, more than 70 per centum of his refinery input of domestic crude oil (or 70 per centum of his refinery input of domestic and imported crude oil) from producers who do not control, are not controlled by, and are not under common control with, such refiner, and (B) marketed or distributed in such quarter and continues to market or distribute a substantial volume of gasoline refined by him through branded independent marketers or nonbranded independent marketers.

(4) The term "small refiner" means a refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 175,000 barrels per day.

(5) The term "refined petroleum product" means gasoline, kerosene, distillates (including Number 2 fuel oil), LPG, refined lubricating oils, or diesel fuel.

(6) The term "LPG" means propane and butane, but not ethane.

(7) The term "United States" when used in the geographic sense means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(Pub. L. 93-159, § 3, Nov. 27, 1973, 87 Stat. 628.)

Section Referred to in Other Sections

This section is referred to in sections 753, 798 of this title.

§ 753. Mandatory allocation

(a) Authority to promulgate regulations covering crude oil, residual fuel oil, and refined petroleum products

Not later than fifteen days after November 27, 1973, the President shall promulgate a regulation providing for the mandatory allocation of crude oil, residual fuel oil, and each refined petroleum product, in amounts specified in (or determined in a manner prescribed by) and at prices specified in (or determined in a manner prescribed by) such regulation. Subject to subsection (d) of this section, such regulation shall take effect not later than fifteen days after its promulgation. Such regulation shall apply to all crude oil, residual fuel oil, and refined petroleum products produced in or imported into the United States.

(b) Requisite areas of coverage for regulations; price regulations; unobtainability or curtailment of other fuels; limitations on pricing policy

(1) The regulation under subsection (a) of this section, to the maximum extent practicable, shall provide for—

(A) protection of public health (including the production of pharmaceuticals), safety and welfare (including maintenance of residential heating, such as individual homes, apartments and similar occupied dwelling units), and the national defense;

(B) maintenance of all public services (including facilities and services provided by municipally, cooperatively, or investor owned utilities or by any State or local government or authority, and including transportation facilities and services which serve the public at large);

(C) maintenance of agricultural operations, including farming, ranching, dairy, and fishing activities, and services directly related thereto;

(D) preservation of an economically sound and competitive petroleum industry; including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded independent marketers;

(E) the allocation of suitable types, grades, and quality of crude oil to refineries in the United States to permit such refineries to operate at full capacity;

(F) equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent refiners, small refiners, nonbranded independent marketers, branded independent marketers, and among all users;

(G) allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of, exploration for, and production or extraction of—

(i) fuels, and

(ii) minerals essential to the requirements of the United States,

and for required transportation related thereto;

(H) economic efficiency; and

(I) minimization of economic distortion, inflexibility, and unnecessary interference with market mechanisms.

(2) In specifying prices (or prescribing the manner for determining them), the regulation under subsection (a) of this section—

(A) shall provide for a dollar-for-dollar passthrough of net increases in the cost of crude oil, residual fuel oil, and refined petroleum products at all levels of distribution from the producer through the retail level;

(B)(i) shall not permit any net crude oil cost increases—

(I) which are incurred by a refiner during the calendar month immediately preceding the effective date of this paragraph, or in any month thereafter, and

(II) which are not passed through in prices charged pursuant to such regulation in the 2 calendar months following the calendar month in which such crude oil cost increases were incurred,

to be passed through by such refiner in any month subsequent to the 2 calendar months following the calendar month in which such crude oil cost increases were incurred, unless the President makes the findings specified in clause (ii)(II)(aa), and such passthrough is consistent with the requirements specified in clause (ii)(II)(bb).

(ii) shall not permit the passthrough in any month of—

(I) any net crude oil cost increases incurred by a refiner not later than the last day of the calendar month which begins two months prior to the effective date of this paragraph and not passed through by the end of the last calendar month prior to the effective date of this paragraph unless such passthrough is not in excess of 10 percent of the total amount of such increased crude oil costs not passed through as of the last day of the last calendar month prior to the effective date of the amendment promulgated under section 757(a) of this title; and

(II) any net crude oil cost increases incurred by a refiner after the effective date of this paragraph, which net crude oil cost increases were not passed through within the 2 calendar months following the calendar month in which such crude oil cost increases were incurred, unless—

(aa) the President finds, and reports to the Congress with respect to such finding, that a passthrough of such crude oil cost increases is necessary to alleviate the impact on refiners, marketers, or consumers of significant increases in costs, to provide for equitable cost recovery consistent with the attainment, to the maximum extent practicable, of the objectives specified in paragraph (1), or to avoid competitive disadvantage; and

(bb) such passthrough in any month of such crude oil cost increases is not in excess of 10 percent of the total amount of such crude oil cost increases as of the end of the calendar month in which the effective date of this paragraph occurs or any month thereafter;

(C) shall provide for the use of the same date in the computation of markup, margin, and posted price for all marketers or distributors of crude oil, residual fuel, and refined petroleum products at all levels of marketing and distribution; and

(D) shall not permit more than a direct proportionate distribution (by volume) to Number 2 oils. (Number 2 heating oil and Number 2-D diesel fuel), aviation fuel of a kerosene or naphtha type, and propane produced from crude oil, of any increased costs of crude oil incurred by a refiner; except that the President may, by amendment to the regulation under subsection (a) of this section or by order, permit deviation from such proportion distribution of costs, if the President finds that refinery operations justify such deviation and further finds that to permit such deviation is consistent with the attainment of the objectives in paragraph (1) and would not result in inequitable prices for any class of users of such product.

As used in this paragraph, the term "effective date of this paragraph" means the effective date specified in section 402(b) of the Energy Policy and Conservation Act.

(3) The President in promulgating the regulation under subsection (a) of this section shall give consideration to allocating crude oil, residual fuel oil, and refined petroleum products in a manner which results in making available crude oil, residual fuel oil, or refined petroleum products to any person whose use of fuels other than crude oil, residual fuel oil, and refined petroleum products has been curtailed by, or pursuant to a plan filed in compliance with, a rule or order of a Federal or State agency, or where such person's supply of such other fuels is unobtainable by reason of an abandonment of service permitted or ordered by a Federal or State agency.

(c) Pro rata reductions; Presidential reports to Congress; allocation adjustments; LPG allocation

(1) To the extent practicable and consistent with the objectives of subsection (b) of this section, the mandatory allocation program established under the regulation under subsection (a) of this section shall be so structured as to result in the allocation, during each period during which the regulation applies, of each refined petroleum product to each branded independent marketer, each nonbranded independent marketer, each small refiner and each independent refiner, and of crude oil to each small refiner and each independent refiner, in an amount not less than the amount sold or otherwise supplied to such marketer or refiner during the corresponding period of 1972, adjusted to provide—

(A) in the case of refined petroleum products, a pro rata reduction in the amount allocated to each person engaged in the marketing or distribution of a refined petroleum product if the aggregate amount of such product produced in and imported into the United States is less than the aggregate amount produced and imported in calendar year 1972; and

(B) in the case of crude oil, a pro rata reduction in the amount of crude oil allocated to each refiner if the aggregate amount produced in and imported into the United States is less than the aggregate amount produced and imported in calendar year 1972.

(2)(A) The President shall report to the Congress monthly, beginning not later than January 1, 1974, with respect to any change after calendar year 1972 in—

(i) the aggregate share of nonbranded independent marketers,

(ii) the aggregate share of branded independent marketers, and

(iii) the aggregate share of other persons engaged in the marketing or distributing of refined petroleum products,

of the national market or the regional market in any refined petroleum product (as such regional markets shall be determined by the President).

(B) If allocation of any increase of the amount of any refined petroleum product produced in or imported into the United States in excess of the amount produced or imported in calendar year 1972 contributes to a significant increase in any market share described in clause (i), (ii), or (iii) of subparagraph (A), the President shall by order require an equitable adjustment in allocations of such product under the regulation under subsection (a) of this section.

(3) The President shall, by order, require such adjustments in the allocations of crude oil, residual fuel oil, and refined petroleum products established under the regulation under subsection (a) of this section as may reasonably be necessary (A) to accomplish the objectives of subsection (b) of this section, or (B) to prevent any person from taking any action which would be inconsistent with such objectives.

(4) The President may, by order, require such adjustments in the allocations of refined petroleum products and crude oil established under the regulation under subsection (a) of this section as he determines may reasonably be necessary—

(A) in the case of refined petroleum products (i) to take into consideration market entry by branded independent markets and nonbranded independent marketers during or subsequent to calendar year 1972, or (ii) to take into consideration expansion or reduction of marketing or distribution facilities of such marketers during or subsequent to calendar year 1972, and

(B) in the case of crude oil (i) to take into consideration market entry by independent refiners and small refiners during or subsequent to calendar year 1972, or (ii) to take into consideration expansion or reduction of refining facilities of such refiners during or subsequent to calendar year 1972.

Any adjustments made under this paragraph may be made only upon a finding that, to the maximum extent practicable, the objectives of subsection (b) of this section are attained.

(5) To the extent practicable and consistent with the objectives of subsection (b) of this section, the mandatory allocation program established under the regulation under subsection (a) of this section shall not provide for allocation of LPG in a manner which denies LPG to any industrial user if no substitute for LPG is available for use by such industrial user.

(d) Gasoline allocation; Presidential report to Congress.

(1) The provisions of the regulation under subsection (a) of this section respecting allocation of gasoline need not take effect until thirty days after the promulgation of such regulation, except that the provisions of such regulation respecting price of gasoline shall take effect not later than fifteen days after its promulgation.

(2) If—

(A) an order or regulation under section 203(a)(3) of the Economic Stabilization Act of 1970 applies to crude oil, residual fuel oil, or a refined petroleum product and has taken effect on or before the fifteenth day after November 27, 1973, and

(B) the President determines that delay in the effective date of provisions of the regulation under subsection (a) of this section relating to such oil or product is in the public interest and is necessary to effectuate the transition from the program under such section 203(a)(3) to the mandatory allocation program required under this chapter,

he may in the regulation promulgated under subsection (a) of this section delay, until not later than thirty days after the date of the promulgation of the regulation, the effective date of the provisions of such regulation insofar as they relate to such oil or product. At the same time the President promulgates such regulation, he shall report to Congress setting forth his reasons for the action under this paragraph.

(e) Entitlements

Any provision of the regulation under subsection (a) of this section—

(1) which requires the purchase of entitlements, or the payment of money through any other similar cash transfer arrangement, the purpose of which is to reduce disparities in the crude oil acquisition costs of domestic refiners, and

(2) which is based upon the number of barrels of crude oil input, or receipts, or both, of any refiner,

shall not apply to the first 50,000 barrels per day of input, or receipts, or both, of any refiner whose total refining capacity (including the refining capacity of any person who controls, is controlled by, or is under common control with such refiner) did not exceed on January 1, 1975, and does not thereafter exceed 100,000 barrels per day. The preceding sentence shall not affect any provisions of the regulation under subsection (a) of this section with respect to the receipt by any small refiner as defined in section 752(4) of this title of payments for entitlements or any other similar cash transfer arrangement.

(Pub. L. 93-159, §4, Nov. 27, 1973, 87 Stat. 629; Pub. L. 93-511, Dec. 5, 1974, 88 Stat. 1608; Pub. L. 94-99, §2, Sept. 29, 1975, 89 Stat. 481; Pub. L. 94-133, §1, Nov. 14, 1975, 89 Stat. 694; Pub. L. 94-163, title IV, §§401(b)(1)-(3), 402(a), 403(a), 451, Dec. 22, 1975, 89 Stat. 946, 948.)

REFERENCES IN TEXT

Section 402(b) of the Energy Policy and Conservation Act, referred to in the provisions following subsec. (b)(2)(D), is section 402(b) of Pub. L. 94-163, which is set out as an Effective Date of 1975 Amendment note under this section.

Section 203(a)(3) of the Economic Stabilization Act of 1970, referred to in subsec. (d)(2)(A), (B), is section 203(a)(3) of Pub. L. 91-379, as amended, which is set out as Cost of Living Stabilization note under section 1904 of Title 12, Banks and Banking.

AMENDMENTS

1975—Subsec. (a). Pub. L. 94-163, §401(b)(2), substituted "Subject to subsection (d) of this section" for "Subject to subsection (f) of this section" and struck out "Except as provided in subsection (e) of this section" preceding "Such regulation shall apply to all crude oil".

Subsec. (b)(1)(A). Pub. L. 94-163, §451(a), inserted reference to the production of pharmaceuticals.

Subsec. (b)(1)(G). Pub. L. 94-163, §451(b), inserted reference to minerals essential to the requirements of the United States.

Subsec. (b)(2). Pub. L. 94-163, §402(a), substituted "regulation under subsection (a) of this section" for "regulation shall provide for" in the provisions preceding subpar. (A), added "shall provide for" preceding "a dollar-for-dollar passthrough" and substituted "products at all levels of distribution from the producer through the retail level;" for "products to all marketers or distributors at the retail level; and" in subpar. (A), added subpar. (B) and redesignated former subpar. (B) as (C), added "shall provide for" preceding "the use of the same date" in subpar. (C) as so redesignated, and added subpar. (D) and the definition of "effective date of this paragraph" following subpar. (D).

Subsec. (c). Pub. L. 94-163, § 401(b)(3), substituted "subsection (b)" for "subsections (b) and (d)" wherever appearing in pars. (1), (4), and (5).

Subsec. (d). Pub. L. 94-163, § 401(b)(1), redesignated subsec. (f) as (d). Former subsec. (d), which related to the use by users within the United States of refined petroleum products produced or refined within the United States, was repealed.

Subsec. (e). Pub. L. 94-163, §§ 401(b)(1), 403(a), added subsec. (e). Former subsec. (e), which related to crude oil prices and allocations at the producer level, was repealed.

Subsec. (f). Pub. L. 94-163, § 401(b)(1), redesignated subsec. (f) as (d).

Subsec. (g). Pub. L. 94-163, § 401(b)(1), struck out subsec. (g) which related to the termination date for regulations, amendments, and exemptions.

Subsec. (g)(1). Pub. L. 94-133 substituted "December 31, 1975" for "November 15, 1975" wherever appearing.

Pub. L. 94-99 substituted "November 15, 1975" for "August 31, 1975" wherever appearing.

1974—Subsec. (g)(1). Pub. L. 93-511 substituted "August 31, 1975" for "February 28, 1975" wherever appearing therein.

EFFECTIVE DATE OF 1975 AMENDMENTS

Section 401(b)(5) of Pub. L. 94-163 provided that: "The amendments made by paragraphs (1), (2), (3), and (4) of this subsection [amending this section and repealing provisions set out as a note under section 1904 of Title 12, Banks and Banking], to the Emergency Petroleum Allocation Act of 1973, shall take effect on the effective date of the amendment to the regulation under section 4(a) [subsec. (a) of this section], required by section 8(a) of such Act [section 757(a) of this title]."

Section 402(b) of Pub. L. 94-163 provided that: "The amendment made by this section [amending subsec. (b)(2) of this section and enacting section 759 of this title], to the Emergency Petroleum Allocation Act of 1973, shall take effect on the effective date of the amendment to the regulation under section 4(a) [subsec. (a) of this section], required by section 8(a) of such Act [section 757(a) of this title]."

Section 403(b) of Pub. L. 94-163 provided that: "Subsection (a) of this section [enacting subsec. (e) of this section] shall apply with respect to payments due on or after the last day of the month during which the date of enactment of this Act [Dec. 22, 1975] occurs."

Section 463 of Pub. L. 94-163 provided that: "Except as otherwise provided, the amendments made by this Act to the Emergency Petroleum Allocation Act of 1973 [amending this section and sections 754 and 755 of this title and enacting sections 757 to 760h of this title] shall take effect as of midnight, December 15, 1975."

Section 2 of Pub. L. 94-133 provided that: "The amendments made in the first section of this Act to the Emergency Petroleum Allocation Act of 1973 [amending subsec. (g)(1) of this section] shall take effect at midnight, November 15, 1975."

DELEGATION OF FUNCTIONS

Functions of the President under subsec. (c)(2) of this section delegated to the Administrator of the Federal Energy Administration, see section 2(b) of Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, set out as a note under section 761 of this title.

REGULATIONS; EFFECTIVE DATE

Section 3 of Pub. L. 94-99 provided that: "It is the intent of the Congress that the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 [this chapter] shall be effective for the period between August 31, 1975, and the date of enactment of this Act [Sept. 29, 1975]."

PURPOSE OF EXTENSION; STATUS QUO WITHOUT MAJOR CHANGE IN PETROLEUM PRICING POLICY; PRICE ADJUSTMENT POLICY

Section 4 of Pub. L. 94-99 provided that: "The purpose of this limited extension of the Emergency Petroleum Allocation Act [this chapter] is to provide Congress and the Executive adequate time and opportunity to reach mutual agreement on a long-term petroleum pricing policy. During the period of this extension it is the intent of the Congress that the status quo shall be maintained and the President shall institute no major change in petroleum pricing policy under section 4(g)(2) of the Act [former subsec. (g)(2) of this section] prior to November 1, 1975. Any adjustment the President may make in price shall be in accord with his policy on inflation impact statements and economic justification set forth in Executive Order Numbered 11821 [set out under section 1904 of Title 12, Banks and Banking] and in Circular Numbered A-107, January 23, 1975, Office of Management and Budget."

SENATE LEGISLATIVE CALENDAR FOR CONSIDERATION OF DISAPPROVAL RESOLUTION

Section 5 of Pub. L. 94-99 provided that: "Any Senate resolution to disapprove a Presidential decontrol proposal submitted under section 4(g)(2) [former subsec. (g)(2) of this section] shall be immediately placed upon the Senate legislative calendar and any motion by the Majority Leader or his designee thereafter to proceed to the consideration of such disapproval resolution shall be decided without debate and by majority vote; and within forty-eight hours after the disapproval resolution is made the pending business or sooner if otherwise ordered by the Senate, the Chair shall direct the Clerk to call the roll on the final disposition of the disapproval resolution without any further debate or intervening motion, any other rule or provision of law notwithstanding."

CONSTRUCTION OF REFINERIES BY SMALL AND INDEPENDENT REFINERS

Pub. L. 94-385, title I, § 123, Aug. 14, 1976, 90 Stat. 1134, provided:

"(a) It is the intent of the Congress that, for the purpose of fostering construction of new refineries by small and independent refiners in the United States, the Administrator of the Federal Energy Administration shall take such action, within his authority under other law consistent with the attainment, to the maximum extent practicable, of the objectives under section 4(b)(1)(D) of the Emergency Petroleum Allocation Act of 1973 [subsection (b)(1)(D) of this section], as the Administrator determines necessary to insure that rules, regulations, or orders issued by him do not impose unreasonably, unnecessary, or discriminatory barriers to entry for small refiners and independent refiners.

"(b) Not later than April 1, 1977, the Administrator shall report to the Congress with respect to actions taken to carry out the policies in subsection (a).

"(c) For the purposes of this section the terms 'small refiner' and 'independent refiner' have the same meaning as such terms have under the Emergency Petroleum Allocation Act of 1973 [this chapter]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 754 to 758, 760 to 760g, 764 of this title; title 42 sections 6241, 6263, 6271.

§ 754. Administration and enforcement; delegation of authority; civil and criminal penalties

(a)(1) Except as provided in paragraph (2), (A) sections 205 through 207 and sections 209 through 211 of the Economic Stabilization Act of 1970 (as in effect on November 27, 1973) shall apply to the regulation promulgated under section 753(a) of this title, to any order under this chapter, and to any action taken by the President (or his delegate) under this chapter, as if such regulation had been promulgated, such order had been issued, or such action had been taken under the Economic Stabilization Act of 1970; and (B) section 212 (other than 212(b)) and 213 of such Act shall apply to functions under this chapter to the same extent such sections apply to functions under the Economic Stabilization Act of 1970.

(2) The expiration of authority to issue and enforce orders and regulations under section 218 of such Act shall not affect any authority to amend and enforce the regulation or to issue and enforce any order under this chapter, and shall not effect any authority under sections 212 and 213 insofar as such authority is made applicable to functions under this chapter.

(3)(A) Whoever violates any provision of the regulation under section 753(a) of this title, or any order under this chapter shall be subject to a civil penalty—

(i) with respect to activities relating to the production, distribution, or refining of crude oil, of not more than $20,000 for each violation;

(ii) with respect to activities relating to the distribution of residual fuel oil or any refined petroleum product (other than activities entirely at the retail level), of not more than $10,000 for each violation; and

(iii) with respect to activities—

(I) entirely relating to the distribution of residual fuel oil or any refined petroleum product at the retail level, or

(II) activities not referred to in clause (i) or (ii) of[1] subclause (I) of this clause, or not more than $2,500 for each violation.

(B) Whoever willfully violates any provision of such regulation, or any such order shall be imprisoned not more than 1 year, or—

(i) with respect to activities relating to the production or refining of crude oil, shall be fined not more than $40,000 for each violation;

(ii) with respect to activities relating to the distribution of residual fuel oil or any refined petroleum product (other than at the retail level), shall be fined not more than $20,000 for each violation;

(iii) with respect to activities relating to the distribution of residual fuel oil or any refined petroleum product at the retail level or any other person shall be fined not more than $10,000 for each violation;

or both.

(4) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of paragraph (3), shall be subject to penalties under this subsection without regard to any penalties to which that corporation may be subject under paragraph (3) except that no such individual director, officer, or agent shall be subject to imprisonment under paragraph (3), unless he also has knowledge, or reasonably should have known, of notice of noncompliance received by the corporation from the President.

(b) The President may delegate all or any portion of the authority granted to him under this chapter to such officers, departments, or agencies of the United States, or to any State (or officer thereof), as he deems appropriate.

(Pub. L. 93-159, § 5, Nov. 27, 1973, 87 Stat. 633; Pub. L. 94-163, title IV, § 452, Dec. 22, 1975, 89 Stat. 948.)

REFERENCES IN TEXT

Sections 205 through 207, 209 through 211, 212, 213, and 218 of the Economic Stabilization Act of 1970 and the Economic Stabilization Act of 1970, referred to in subsec. (a)(1) and (2), are references to such sections respectively of Pub. L. 91-379, as amended, which is set out as Cost of Living Stabilization note under section 1904 of Title 12, Banks and Banking.

AMENDMENTS

1975—Subsec. (a)(1). Pub. L. 94-163, § 452(1), substituted "sections 205 through 207 and sections 209 through 211" for "sections 205 through 211" in the provisions referring to the Economic Stabilization Act of 1970.

Subsecs. (a)(3), (4). Pub. L. 94-163, § 452(2), added subsecs. (a)(3) and (4).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-163 effective as of midnight, Dec. 15, 1975, see section 463 of Pub. L. 94-163, set out as a note under section 753 of this title.

DELEGATION OF FUNCTIONS

Functions of the President under this chapter delegated to the Administrator of the Federal Energy Administration, see section 2(a) of Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, set out as a note under section 761 of this title.

EXECUTIVE ORDER NO. 11748

Ex. Ord. No. 11748, Dec. 4, 1973, 38 F.R. 33575, formerly set out as a note under this section, which established the Federal Energy Office, was revoked by Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, set out as a note under section 761 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 764 of this title; title 42 sections 6263, 6382.

§ 755. Impact on other laws

(a) Actions under Economic Stabilization Act of 1970

All action duly taken pursuant to clause (3) of the first sentence of section 203(a) of the Economic Stabilization Act of 1970 in effect immediately prior to the effective date of the regulation promulgated under section 753(a) of this title, shall continue in effect until modified pursuant to this chapter.

(b) Preemption of State or local allocation regulations and orders

The regulation under section 753 of this title and any order issued thereunder shall preempt any provision of any program for the allocation of crude oil, residual fuel oil, or any refined petroleum product established by any State or local government if such provision is in conflict with such regulation or any such order.

(c) Defenses

There shall be available as a defense to any action brought for breach of contract in any Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange crude oil, residual fuel oil, or any refined petroleum product, that such delay or failure was caused solely by compliance with the provisions of this chapter or with the regulation or any order under this chapter.

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[1] So in original. Probably should be "or".

(Pub. L. 93-159, § 6, Nov. 27, 1973, 87 Stat. 633; Pub. L. 94-163, title IV, § 453, Dec. 22, 1975, 89 Stat. 949.)

REFERENCES IN TEXT

Section 203(a) of the Economic Stabilization Act of 1970, referred to in subsec. (a), is section 203(a) of Pub. L. 91-379, as amended, which is set out in the Cost of Living Stabilization note under section 1904 of Title 12, Banks and Banking.

AMENDMENTS

1975—Subsec. (c). Pub. L. 94-163 struck out provisions prohibiting any construction of the provisions of the chapter which would grant immunity from civil or criminal liability, or create defenses to actions, under the antitrust laws, and struck out provisions requiring examination by the Attorney General and Federal Trade Commission of regulation under subsec. (a) for its impact on antitrust laws, specifying the manner in which oil company personnel must confer so as to avoid antitrust violations, and making activities carried out in accordance with regulations a defense to antitrust actions.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-163 effective as of midnight, Dec. 15, 1975, see section 463 of Pub. L. 94-163, set out as a note under section 753 of this title.

§ 756. Monitoring of program by Federal Trade Commission

(a) During the forty-five day period beginning on the effective date on which the regulation under section 753 of this title first takes effect, the Federal Trade Commission shall monitor the program established under such regulation; and, not later than sixty days after such effective date, shall report to the President and to the Congress respecting the effectiveness of this chapter and actions taken pursuant thereto.

(b) For purposes of carrying out this section, the Federal Trade Commission's authority, under sections 46, 49, and 50 of this title to gather and compile information and to require furnishing of information, shall extend to any individual or partnership, and to any common carrier subject to the Acts to regulate commerce (as such Acts are defined in section 44 of this title).

(Pub. L. 93-159, § 7, Nov. 27, 1973, 87 Stat. 635.)

§ 757. Oil pricing policy

(a) Presidential authority to promulgate amendment to regulation establishing ceiling prices applicable to any first sale of crude oil produced in United States; resulting maximum weighted average first sale price

Not later than the first day of the second full calendar month following December 22, 1975, the President shall promulgate and make effective an amendment to the regulation under section 753(a) of this title which regulation, as amended, shall establish ceiling prices (or the manner of determining ceiling prices) applicable to any first sale of crude oil produced in the United States, such that the resulting actual weighted average first sale price for all such crude oil during such calendar month and each of the 39 months thereafter shall not exceed a maximum of $7.66 per barrel (hereinafter in this section referred to as the "maximum weighted average first sale price"), except as may be adjusted pursuant to this section.

(b) Standards used in determining prices and classifications in Presidential amendment to regulation establishing ceiling prices; increase in price for any volume of old crude oil production; definition of old crude oil production

(1) The regulation under section 753(a) of this title, as amended pursuant to subsection (a) of this section or by any subsequent amendment thereto, may, subject to the limitations related to the maximum weighted average first sale price and other requirements of this section, provide for different ceiling prices (or manner of determining ceiling prices) for different classifications of crude oil produced in the United States. In providing for different ceiling prices (or the manner for determining such ceiling prices) and classifications for such crude oil, the President shall determine that such ceiling prices (or the manner for determining such ceiling prices) and such classifications—

(A) are administratively feasible; and

(B) are justified on the basis that such prices and such classifications are consistent with obtaining optimum production of crude oil in the United States.

(2) No amendment to the regulation under section 753(a) of this title made after December 22, 1975, may permit, in any month which begins after such date, an increase in the price for any volume of old crude oil production from any priorities,[1] unless the President finds that such amendment—

(A) will give positive incentives for (i) enhanced recovery techniques, or (ii) deep horizon development, from such properties; or

(B) is necessary to take into account declining production from such properties; and

(C) is likely to result in a level of production from such properties beyond that which would otherwise occur if no such amendment were made.

(3) As used in paragraph (2), the term "old crude oil production" means that volume of crude oil produced and sold from a property in a month which is equal to or less than the volume of old crude oil, as defined in section 212.72 of title 10, Code of Federal Regulations (as in effect on November 1, 1975), produced and sold from such property in the months of September, October, and November of 1975, divided by 3.

(c) Periodic Presidential determination regarding actual weighted average first sale price for crude oil; adjustments in maximum weighted average first sale price by Presidential amendment to regulation

(1) Not later than 6 months after the effective date of the amendment promulgated under subsection (a) of this section, and not later than every 6 months thereafter, the President shall, on the basis of valid and reliable informa-

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[1] So in original. Probably should be "properties".

tion (which may include information obtained by a valid and reliable sampling technique) of actual first sale prices of domestic crude oil, determine whether and the extent to which the actual weighted average first sale price for crude oil produced in the United States during any 6-month period or portion thereof for which data are available following the effective date of the amendment promulgated under subsection (a) of this section, exceeded or was less than the maximum weighted average first sale price of such crude oil specified in subsection (a) of this section as may be adjusted pursuant to this section.

(2) If the President finds, pursuant to paragraph (1) of this subsection, that the regulation under section 753(a) of this title, as amended, resulted in an actual weighted average first sale price in excess of the maximum weighted average first sale price specified in subsection (a) of this section as adjusted pursuant to this section, he shall amend the regulation to make such compensating adjustments as are necessary to result, in a corresponding period, in an actual weighted average first sale price for domestic crude oil sufficient to offset such excess.

(3) If the President finds, pursuant to paragraph (1) of this subsection, that the regulation under section 753(a) of this title, as amended, resulted in an actual weighted average first sale price less than the maximum weighted average first sale price specified in subsection (a) of this section as adjusted pursuant to this section, he may, notwithstanding the requirements of this section pertaining to such maximum weighted average first sale price, amend the regulation to make such compensating adjustments in the regulation as are necessary to offset the deficiency in a corresponding period.

(d) Effective date and considerations of adjusted GNP deflator and production incentive in determining adjustments in maximum weighted average first sale price by Presidential amendment to regulation; definition of adjusted GNP deflator; prerequisite for applicability of production incentive in adjustment

(1) The amendment promulgated pursuant to subsection (a) of this section (or any subsequent amendment to the regulation under section 753(a) of this title) may provide for an adjustment to the maximum weighted average first sale price specified in subsection (a) of this section, such adjustment to begin no earlier than in the calendar month following the first month the amendment is in effect—

(A) to take into account the impact of inflation as measured by the adjusted GNP deflator; and

(B) as a production incentive;

except that the combined effect of any such adjustments referred to in subparagraphs (A) and (B) shall not result in an increase in the maximum weighted average first sale price in excess of 10 per centum per annum (compounded annually), unless modified pursuant to this section.

(2) As used in this subsection, the term "adjusted GNP deflator" means the first revision of the quarterly percent change, seasonally adjusted at annual rates, of the most recent implicit price deflator for the gross national product which shall be computed and published for each calendar quarter by the Department of Commerce, subject to such additional modification as the President shall make to exclude therefrom any amount which he determines is attributable solely and directly to increases which occur after December 22, 1975, in prices of imported crude oil, residual fuel oil, or any refined petroleum product resulting from concerted action of two or more petroleum exporting countries.

(3) The adjustment as a production incentive referred to in paragraph (1)(B) may be made only on a finding by the President that such an adjustment is likely to provide positive incentive for—

(A) the discovery or development of high cost and high risk properties (including new wildcat properties, and properties located on the Outer Continental Shelf, properties located north of the Arctic Circle, deep wells and deep horizons in onshore or offshore properties, and properties operated by independent producers);

(B) the application of enhanced recovery techniques to producing properties to obtain a level of production higher than would otherwise occur from those properties but for such adjustment; or

(C) sustaining production from marginal wells.

(e) Submission to Congress of Presidential amendment to regulation; contents; finding to accompany combined adjustment in excess of allowable maximum; Congressional disapproval of amendment

(1) Not earlier than 90 days after the effective date of the amendment promulgated under subsection (a) of this section and not earlier than 90 days after the date of any previous submission under this subsection, the President may submit to the Congress, in accordance with the procedures specified in section 6421 of title 42, an amendment to the regulation promulgated under section 753(a) of this title which provides for a combined adjustment limitation in excess of the 10 per centum limitation specified in subsection (d)(1) of this section.

(2) Any such amendment shall be accompanied by a finding that a combined adjustment limitation greater than permitted by subsection (d)(1) is necessary to provide a more adequate incentive with respect to the matters referred to in subparagraphs (A), (B), or (C) of subsection (d)(3) of this section.

(3) Any such amendment shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in section 6421 of title 42.

(f) Presidential report to Congress on impact of amendment to economy and supplies; submission of amendment to Congress by President; contents; Congressional disapproval of amendment; submission of additional amendment upon disapproval; effect of no amendment to continue adjustment as production incentive

(1) On February 15, 1977, the President shall submit to the Congress a report containing an analysis of the impact of any amendment adopted pursuant to this section on the economy and on the supply of crude oil, residual fuel

oil, and refined petroleum products and an analysis of the effects on price and the production of domestic crude oil resulting from the amendments made to this section by sections 121 and 122 of the Energy Conservation and Production Act.

(2) On March 15, 1977, the President may submit with such report to the Congress, in accordance with the procedures specified in section 6421 of title 42, an amendment to the regulation promulgated under section 753(a) of this title which—

(A) provides for the continuation of the adjustment as a production incentive (referred to in subsection (d) of this section);

(B) provides for a modification of the combined adjustment limitation (referred to in subsection (d) of this section, as may have been amended pursuant to subsection (e) of this section); or

(C) provides for adjustments with respect to both subparagraphs (A) and (B).

(3) Such amendment shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in section 6421 of title 42.

(4) If any such amendment is disapproved by either House of Congress, the President may, not later than 30 days after the date of such disapproval, submit one additional amendment in accordance with paragraph (2), which amendment shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in section 6421 of title 42.

(5) If no amendment to continue the adjustment as a production incentive takes effect, no such adjustment to the maximum weighted average first sale price thereafter may be taken into account in computing such price for any month which begins after (A) the date on which a submission could have been made under paragraph (2) but was not, or (B) the last date on which a submission was disapproved and no further submission pursuant to paragraph (4) could be made, except that the President may, pursuant to the procedures under subsection (e) of this section, submit an amendment to the regulation to provide for a prospective reinstatement of such adjustment.

(g) Presidential report to Congress on regulation in effect April 15, 1977; submission of amendment to Congress by President; criteria, time and contents of amendment; findings and supporting data; Congressional disapproval of amendment; submission of additional amendment upon disapproval; limitations on further amendment of approved amendment

(1) On April 15, 1977, the President shall submit to the Congress a report as to whether the regulation promulgated under section 753(a) of this title and in effect on such date will provide positive price incentives for the development of the domestic crude oil production referred to in paragraph (2)(A) without lessening needed incentives for sustaining or enhancing crude oil production in the remainder of the United States.

(2) If the President determines that a price required to provide positive price incentives for the development of the domestic crude oil production referred to in paragraph (2)(A) would, because of the maximum weighted average first sale price specified in subsection (a) of this section, as adjusted, have the effect of reducing or limiting ceiling prices permitted for crude oil produced in the remainder of the United States to levels which would result in less production of such crude oil than would otherwise occur, the President may, together with such report, or at any time thereafter not earlier than 90 days after any previous submission under this subsection, except as provided in paragraph (4), submit to the Congress in accordance with the procedures specified in section 6421 of title 42 an amendment to the regulation promulgated under section 753(a) of this title which—

(A) excludes up to 2 million barrels a day of crude oil production transported through the trans-Alaska pipeline from the computation of the maximum weighted average first sale price specified in subsection (a) of this section; and

(B) establishes ceiling prices (or a manner of determining prices) for the first sale of crude oil production referred to in subparagraph (A) such that the actual weighted average first sale price for such production will not exceed the highest actual weighted average first sale price permitted under the regulation for significant volumes of any other classification of domestic crude oil.

(3) Any such amendment shall be accompanied by such findings and supporting rationale as the President determines justify such ceiling prices (or manner for determining such prices). Any amendment submitted to the Congress pursuant to this subsection shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in section 6421 of title 42.

(4) If any such amendment is disapproved by either House of Congress, the President may not later than 30 days after the date of such disapproval submit one additional amendment in accordance with paragraphs (2) and (3), which amendment shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in section 6421 of title 42.

(5) If any amendment submitted by the President to the Congress pursuant to this subsection becomes effective, such amendment may thereafter be further amended by the President, subject to the procedures and requirements of paragraphs (2) and (3) of this subsection, except that no such further amendment shall be submitted earlier than January 1, 1978, and thereafter no earlier than 90 days after the date of any previous submission made under this paragraph.

(h) Limitations on judicial review of amendment

In any judicial review of an amendment required by this section to be submitted to the Congress in accordance with the procedures specified in section 6421 of title 42, the reviewing court may not hold unlawful or set aside any such amendment on the ground that any findings made by the President were not adequate to meet the requirements of this section or of subparagraph (A), (E), or (F) of section 706(2) of title 5.

(i) Stripper well crude oil; exemption from regulation; definition; qualification for exemption

(1) The first sale price of stripper well crude oil shall be exempt from the regulation promulgated under section 753 of this title as amended pursuant to the requirements of this section. For the purpose of this section; the President shall include in the computation of the actual weighted average first sale price for crude oil produced in the United States in any month subsequent to August 1976 the actual volume of stripper well crude oil produced in the United States in such subsequent month and such actual volume shall be deemed to have been sold at a first sale price equal to $11.63 per barrel plus the difference between the actual weighted average first sale price in August 1976, for crude oil, other than stripper well crude oil, produced in the United States, and the actual average first sale price in such subsequent month of all classifications of crude oil, other than stripper well crude oil, produced in the United States, weighted as if each such classification were produced in such subsequent month in the same proportion as such classification, or the most nearly comparable classification which existed on August 1, 1976, was produced in August 1976.

(2) For the purposes of this subsection, "stripper well crude oil" means crude oil produced and sold from a property whose maximum average daily production of crude oil per well during any consecutive 12-month period beginning after December 31, 1972, does not exceed 10 barrels.

(3) To qualify for the exemption under this subsection, a property must be producing crude oil at the maximum feasible rate throughout the 12-month qualifying period and in accordance with recognized conservation practices.

(4) The President may define terms used in this subsection consistent with the purposes thereof.

(j) Presidential authority to promulgate amendments to price regulations; price incentives for tertiary enhanced recovery techniques; adjustment of differentials in ceiling prices for crude oil; definitions

(1) As soon as practicable after August 14, 1976, taking into consideration the greater flexibility provided by the amendment relating to the production incentive adjustment under section 122 of the Energy Conservation and Production Act, the President shall promulgate such amendments to the regulation under section 753(a) of this title (relating to price) as shall (A) provide additional price incentives for bona fide tertiary enhanced recovery techniques and (B) provide for the adjustment of differentials in ceiling prices for crude oil that are the result of gravity differentials which are arbitrary, discriminatory, applied on a regional or local basis without reasonable justification, or fail substantially to reflect current relative market valuations of such differentials.

(2) As used in this subsection, the term "tertiary enhanced recovery techniques" means extraordinary and high cost enhancement technologies of a type associated with tertiary applications including, to the extent that such techniques would be uneconomical without additional price incentives, miscible fluid or gas injection, chemical flooding, steam flooding, microemulsion flooding, in situ combustion, cyclic steam injection, polymer flooding, and caustic flooding and variations of the same. The President shall have authority to further define the term by rule.

(Pub. L. 93-159, § 8, as added Pub. L. 94-163, title IV, § 401(a), Dec. 22, 1975, 89 Stat. 941, and amended Pub. L. 94-385, title I, §§ 121, 122, Aug. 14, 1976, 94 Stat. 1132, 1133.)

References in Text

The Energy Conservation and Production Act, referred to in subsecs. (f)(1) and (j)(1), is Pub. L. 94-385. Section 121 of such Act added subsec. (i) of this section and section 122 amended subsecs. (d)-(f) and added subsec. (j) of this section.

Amendments

1976—Subsec. (d)(1). Pub. L. 94-385, § 122(1), struck out "any adjustment as a production incentive shall not permit an increase in the maximum weighted average first sale price in excess of 3 per centum per annum (compounded annually), unless modified pursuant to this section, and" following "except that".

Subsec. (d)(3)(C). Pub. L. 94-385, § 122(2), struck out "including production from stripper wells" following "marginal wells".

Subsec. (e)(1). Pub. L. 94-385, § 122(3), struck out "(A) a production incentive adjustment to the maximum weighted average first sale price in excess of the 3 per centum limitation specified in subsection (d)(1) of this section, (B)" following "title which provides for", and substituted "subsection (d)(1) of this section" for "such subsection, or (C) both".

Subsec. (e)(2). Pub. L. 94-385, § 122(4), struck out "an additional adjustment as a production incentive, or" following "by a finding that" and ", or both," following "subsection (d)(1) of this section".

Subsec. (f)(1). Pub. L. 94-385, § 122(5), added provision for inclusion in Presidential report of impact on price and production of domestic crude oil made by amendments to this section by sections 121 and 122 of the Energy Conservation and Production Act.

Subsec. (f)(2). Pub. L. 94-385, § 122(6), substituted "On March 15, 1977, the President may" for "The President may".

Subsec. (f)(2)(A). Pub. L. 94-385, § 122(7), struck out "or modification" following "the continuation" and "as may have been amended pursuant to subsection (e) of this section" following "subsection (d) of this section".

Subsec. (f)(5). Pub. L. 94-385, § 122(8), struck out "or modify" following "amendment to continue" and "or a modification of such adjustment" following "reinstatement of such adjustment".

Subsec. (i). Pub. L. 94-385, § 121, added subsec. (i).

Subsec. (j). Pub. L. 94-385, § 122(9), added subsec. (j).

Effective Date of 1976 Amendment

Section 124 of Pub. L. 94-385 provided that: "The amendments made to section 8 of the Emergency Petroleum Allocation Act by section 122 of this Act [which enacted subsec. (j) of this section and amended subsecs. (d), (e) and (f) of this section] shall take effect on the date of enactment of this Act [Aug. 14, 1976]. The amendments made to section 8 of such Act by section 121 of this Act [which enacted subsec. (i) of this section] shall take effect on the first day of the first full month which begins after the date of enactment of this Act [Aug. 14, 1976]."

Effective Date

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94-163, set out as a note under section 753 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 753, 758, 760a, 760g of this title.

§ 758. Passthroughs of cost price decreases; effective date

Not later than the first day of the second full calendar month following December 22, 1975, the regulation under section 753(a) of this title shall provide for a dollar-for-dollar passthrough in prices at all levels of distribution from the producer through the retail level of decreases in the costs of crude oil, residual fuel oil, and refined petroleum products (including decrease in costs which result from a reduction in the price of crude oil produced in the United States because of the amendment to such regulation required under section 757(a) of this title.

(Pub. L. 93-159, § 9, as added Pub. L. 94-163, title IV, § 401(a), Dec. 22, 1975, 89 Stat. 946.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94-163, set out as a note under section 753 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 760g of this title.

§ 759. Limitations on pricing authority of President

The President shall have no authority, under this chapter, or under the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.], to prescribe minimum prices for crude oil (or any classification thereof), residual fuel oil, or any refined petroleum product.

(Pub. L. 93-159, § 10, as added Pub. L. 94-163, title IV, § 402(c), Dec. 22, 1975, 89 Stat. 947.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in text, is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, which is classified principally to chapter 77 (§ 6201 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of Title 42 and Tables volume.

EFFECTIVE DATE

Section effective on the effective date of the amendment to the regulation under section 753(a) of this title required by section 757(a) of this title, see section 402(b) of Pub. L. 94-163, set out as a note under section 753 of this title.

§ 760. Reevaluation of regulation; criteria; notice and hearing; transcript; Presidential report to Congress and promulgation of amendments to regulation

(a) Not later than 60 days after December 22, 1975, the President shall give appropriate notice and afford interested persons an opportunity to present written and oral data, views, and arguments respecting the appropriateness of, or the continuing need for, the application of any provision of the regulation promulgated under section 753(a) of this title as such provision relates to the attainment of the objectives specified in section 753(b)(1) of this title. A transcript shall be kept of any such oral presentations of data, views, and argument.

(b) The President shall, after consideration of such written and oral presentations and such other information as may be available to him—

(1) analyze such presentations and report thereon to the Congress within 120 days after December 22, 1975; and

(2) shall promulgate, pursuant to the limitations and authority under section 760a of this title such amendment, or amendments, to the regulation promulgated under section 753(a) of this title as he determines are necessary or appropriate—

(A) to modify any provisions of such regulation in a manner which is consistent with the attainment, to the maximum extent practicable, of objectives specified in section 753(b)(1) of this title; or

(B) to eliminate any provisions of such regulation no longer necessary to provide for the attainment of such objectives.

(Pub. L. 93-159, § 11, as added Pub. L. 94-163, title IV, § 454, Dec. 22, 1975, 89 Stat. 950.)

EFFECTIVE DATE

Section effective Dec. 15, 1975, see section 463 of Pub. L. 94-163, set out as a note under section 753 of this title.

§ 760a. Conversion mechanism to standby authorities

(a) Limitations on Presidential amendments to regulation

The President may not amend the regulation under section 753(a) of this title in any manner which—

(1) exempts crude oil produced in the United States from any provision of such regulation required to be made a part of such regulation by section 757 of this title; or

(2) results in making such regulation, as so amended, inconsistent with any limitation or other requirement specified in section 757 of this title.

(b) Criteria for Presidential amendment to regulation

Except as provided in subsection (a) of this section, the President may amend the regulation under section 753(a) of this title if he determines that such amendment is consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1) of this title and that the regulation, as amended, provides for the attainment, to the maximum extent practicable, of such objectives.

(c) Prerequisites for promulgation of amendment to regulation authorizing exemptions from regulation; procedures; definition of refined product category; Congressional disapproval of amendment

(1) Any such amendment which, with respect to a class of persons or class of transactions (including transactions with respect to any market level), exempts crude oil, residual fuel oil, or any refined petroleum product or refined product category from the provisions of the regulation under section 753(a) of this title as such provisions pertain to either (A) the allocation of amounts of any such oil or product, or (B) the specification of price or the manner for determining the price of any such oil or product, or both of the matters described in subpara-

graphs (A) and (B), may take effect only pursuant to the provisions of this subsection.

(2) The President shall submit any amendment referred to in paragraph (1) to the Congress in accordance with the procedures specified in section 6421 of title 42. Any such amendment shall be accompanied by a specific statement of the President's rationale for such amendment and the matter described in subsection (d) of this section. Such an amendment—

(A) may apply only to one oil or one refined product category;

(B) may apply to the matters specified in either subparagraph (A) or (B) of paragraph (1) of this subsection, or both; and

(C) may provide for scheduled or phased implementation.

(3) As used in this section the term "refined product category" means—

(A) motor gasoline;

(B) Number 2 oils (Number 2 heating oil and Number 2-D diesel fuel);

(C) propane; or

(D) all or any portion of other refined petroleum products as a class (including natural gas liquids and natural gas liquid products, other than propane).

(4) Such an amendment shall not take effect if either House of Congress disapproves such amendment in accordance with the procedures specified in section 6421 of title 42.

(d) Supporting findings and statements by President to accompany submission to Congress of amendment of regulation authorizing exemptions from regulation; contents

(1) The President shall support any amendment described in subsection (b) of this section which is transmitted to the Congress under subsection (c) of this section with a finding that such amendment is consistent with the attainment of the objectives specified in section 753(b)(1) of this title and in the case of—

(A) any exemption described in subsection (c)(1)(A) of this section, with a finding that such oil or refined product category is no longer in short supply and that exempting such oil or refined product category will not have an adverse impact on the supply of any other oil or refined petroleum product subject to this chapter; and

(B) any exemption described in subsection (c)(1)(B) of this section, with a finding that competition and market forces are adequate to protect consumers and that exempting such oil or refined product category will not result in inequitable prices for any class of users of such oil or product.

(2) Any amendment which the President submits to the Congress under subsection (c) of this section shall be accompanied—

(A) by a statement of the President's views as to the potential economic impacts (if any) of such amendment which, where practicable, shall include his views as to—

(i) the State and regional impacts of such amendment (including effects on governmental units);

(ii) the effects of such amendment on the availability of consumer goods and services; the gross national product; competition; small business; and the supply and availability of energy resources for use as fuel or as feedstock for industry; and

(iii) the effects on employment and consumer prices; and

(B) in the case of an exemption described in subsection (c)(1)(B) of this section, by an analysis of the effects of such amendment on the rate of unemployment for the United States, the Consumer Price Index for the United States, and the implicit price deflator for the gross national product.

(e) Limitation on judicial review of amendment

In any judicial review of an amendment required by this section to be submitted to Congress in accordance with the procedures specified in section 6421 of title 42, the reviewing court may not hold unlawful or set aside any such amendment on the ground that any findings made by the President were not adequate to meet the requirements of subsection (c), (d), or (g) of this section or subparagraph (A), (E), or (F), of section 706(2) of title 5.

(f) Presidential authority to reimpose allocation and price requirements on any exempt oil or refined product category; subsequent exemptions

With respect to any oil or refined product category which is exempted pursuant to the provisions of this section, the President shall have authority at any time thereafter to prescribe a regulation or issue an order respecting either the allocation of amounts, or the specification of price or the manner for determining the price, of any such oil or refined product category upon a determination by him that such regulation or order is necessary to attain, and is consistent with, the objectives specified in section 753(b)(1) of this title. Any such oil or refined product category for which allocation or price requirements are reimposed under authority of this subsection may subsequently be exempted without regard to the provisions of subsection (c) of this section.

(g) Exemption for small refiners; modification of exemption by Presidential amendment of regulation; disapproval by Congress

Notwithstanding the provisions of subsection (e) of section 753 of this title, the President may, if he determines that the exemption from payments for certain small refiners required by such subsection—

(1) results in unfair economic or competitive advantage with respect to other small refiners; or

(2) otherwise has the effect of seriously impairing the President's ability to provide in the regulation under section 753(a) of this title for the attainment of the objective specified in section 753(b)(1)(D) of this title and for the attainment of those other objectives specified in section 753(b)(1) of this title;

submit, in accordance with the procedures specified in section 6421 of title 42, an amendment to modify the regulation under section 753(a) of this title with respect to the provisions of such regulation as they relate to such exemption. Such amendment shall not take effect if disapproved by either House of Congress under the procedures specified in such section 6421 of title 42.

(Pub. L. 93-159, § 12, as added Pub. L. 94-163, title IV, § 455, Dec. 22, 1975, 89 Stat. 950.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94-163, set out as a note under section 753 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 760f, 764 of this title.

§ 760b. Standby purchase authority of President

(a) Amendment to regulation to import or purchase foreign oil for resale in United States

The President may, by amendment to the regulation under section 753(a) of this title, provide for and implement a procedure pursuant to which the United States may exercise the exclusive right to import and purchase all or any part of the crude oil, residual fuel oil, and refined petroleum products of foreign origin for resale in the United States.

(b) Subsidy or preference to any importer, purchaser, or user prohibited

The authorities granted under this section shall not be used for the purpose, or with the effect, of providing a subsidy or preference to any importer, purchaser, or user.

(c) Purchase and sale of foreign oil to be without profit or loss; exception

In exercising any authorities granted under this section, the President shall endeavor to buy and sell without profit or loss, except that the President may, in individual cases, sell, on a competitive bid basis, crude oil, residual fuel oil, or any refined petroleum product at a price above or below the cost of such oil or product if, in the judgment of the President, such sales may result in progress toward a lower price for oil sold in international commerce.

(d) Submission of amendment to regulation to Congress for review; supporting explanation and findings by President to accompany submission; Congressional disapproval of amendment

Any amendment to the regulation proposed to be implemented under this section shall be submitted to Congress for review under section 6421 of title 42, together with a detailed explanation of the procedure to be employed and the need therefor and shall be supported by findings by the President that the exercise of such authority is likely to reduce prices for imported oils and products. Such amendment shall not take effect if disapproved by either House of the Congress in accordance with the procedures specified in section 6421 of title 42 and any authority to purchase shall be subject to appropriations Acts.

(e) Submission of Presidential feasibility report to Congress; contents

The President shall submit, within 90 days after December 22, 1975, a report which evaluates the feasibility of reducing the price of crude oil, residual fuel oil, or refined petroleum products of foreign origin for resale in the United States by providing incentives for domestic producers who also import such oils or products into the United States, to work for the reduction of the price of such oils or products. The report shall specifically discuss whether increasing aggregate old crude oil prices by an amount related to any decrease in aggregate prices for such imported oils and products would serve as an incentive for domestic producers to reduce the price of such imported oils and products.

(Pub. L. 93-159, § 13, as added Pub. L. 94-163, title IV, § 456, Dec. 22, 1975, 89 Stat. 952.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94-163, set out as a note under section 753 of this title.

§ 760c. Direct Presidential controls on refinery operations; procedures; criteria

The President may, by amendment to the regulation under section 753(a) of this title or by order, as may be consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1) of this title, require adjustments in the operations of any refinery in the United States with respect to the proportions of residual fuel oil or any refined petroleum product produced through such operations if he determines such adjustments are necessary to assure the production of residual fuel oil or any refined petroleum product in such proportions as are necessary or appropriate to provide for the attainment, to the maximum extent practicable, the objectives specified in section 753(b)(1) of this title.

(Pub. L. 93-159, § 14, as added Pub. L. 94-163, title IV, § 457, Dec. 22, 1975, 89 Stat. 953.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94-163, set out as a note under section 753 of this title.

§ 760d. Presidential control of domestic oil and oil product inventories

(a) Standby authority

In addition to other authority provided for in this chapter to alleviate shortages of crude oil, residual fuel oil, and refined petroleum products, the President may, if he finds an existing or impending regional or national supply shortage of any fuel, by amendment to the regulation under section 753(a) of this title or by order, consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1) of this title, require adjustments in the amounts of crude oil, residual fuel oil or any refined petroleum product which are held in inventory by persons who are engaged in the business of importing, producing, refining, marketing, or distributing such oils or products.

(b) Exercise of authority

The authority specified in subsection (a) of this section may be exercised to require either—

(1) a distribution from such inventories to specified persons or classes of persons at specified rates of distribution or to specified levels of inventory accumulation; or

(2) the accumulation of inventories at specified rates of accumulation or to specified levels,

as the President determines may be necessary or appropriate to provide for the attainment, to the maximum extent practicable, of the objectives of section 753(b)(1) of this title, or as the President determines may be necessary or appropriate to carry out the obligations of the United States under the international energy program, as defined in section 6202 of title 42.

(c) Maintenance of inventories required under standby authority

The authority specified in subsection (a) of this section may require the maintenance of inventories at levels greater or lesser than such person's normal business or operating requirements; except that such amounts shall not exceed the amount of oil or product, as the case may be, such person would use or distribute during any 90-day period of peak usage and in no case may the requirement to accumulate inventories be applied to any person in a manner which would necessitate such person making physical additions to storage facilities in order to comply with any such rule or order.

(Pub. L. 93-159, § 15, as added Pub. L. 94-163, title IV, § 458, Dec. 22, 1975, 89 Stat. 953.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94-163, set out as a note under section 753 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 760e of this title.

§ 760e. Prohibition against willful accumulation of excess crude, etc., oil during severe energy supply interruption

Except as may be otherwise provided with respect to persons engaged in the business of producing, refining, distributing, or marketing crude oil, residual fuel oil, or any refined petroleum product pursuant to section 760d of this title or pursuant to requirements under section 6236 of title 42 (relating to the Industrial Strategic Petroleum Reserve), the regulation under section 753(a) of this title shall prohibit any person, during a severe energy supply interruption (as defined in section 6202 of title 42) from willfully accumulating crude oil, residual fuel oil, or any refined petroleum product in inventories, or otherwise, in amounts which are in excess of such person's reasonable needs (as such term shall be defined in such regulation).

(Pub. L. 93-159, § 16, as added Pub. L. 94-163, title IV, § 459, Dec. 22, 1975, 89 Stat. 954.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94-163, set out as a note under section 753 of this title.

§ 760f. Allocation of asphalt; Presidential authority for amendment of regulation; subsequent exemption

(a) The President may amend the regulation under section 753(a) of this title to require, in a manner which he finds is consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1) of this title, the allocation of asphalt in amounts specified in (or determined in a manner prescribed by), or at prices specified in (or determined in a manner prescribed by) such amendment to the regulation, or both.

(b) If the President exercises the authority under this section, he may thereafter amend the regulation under section 753(a) of this title to exempt asphalt from such regulation without regard to the provisions of section 760a of this title.

(Pub. L. 93-159, § 17, as added Pub. L. 94-163, title IV, § 460, Dec. 22, 1975, 89 Stat. 955.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94-163, set out as a note under section 753 of this title.

§ 760g. Conversion date of Presidential authority from mandatory to discretionary to promulgate, etc., regulation; termination date of Presidential authority limitations; expiration date of Presidential authority to promulgate, etc., regulation or issue order; effect on pending actions

Notwithstanding any other provision of this chapter, at midnight on the conclusion of the 40th month in which the amendment under section 757(a) of this title is in effect, the President's authority to promulgate, make effective, and amend a regulation pursuant to section 753(a) of this title shall become discretionary rather than mandatory, and the limitations on the President's authority contained in sections 753(b)(2), 757, and 758 of this title shall terminate. The authority to promulgate and amend any regulation or to issue any order under this chapter shall expire at midnight September 30, 1981, but such expiration shall not affect any action or pending proceedings, administrative, civil, or criminal, not finally determined on such date, nor any administrative, civil, or criminal action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such expiration date.

(Pub. L. 93-159, § 18, as added Pub. L. 94-163, title IV, § 461, Dec. 22, 1975, 89 Stat. 955.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94-163, set out as a note under section 753 of this title.

§ 760h. Reimbursement to States for implementation of delegated responsibilities

(a) Authorization of President

The President is authorized to reimburse any State for expenses incurred by such State in carrying out any responsibilities delegated to such State by the President under the provisions of this chapter.

(b) Source of reimbursement

Such reimbursements may be paid from any funds appropriated for the purpose of carrying out responsibilities under this chapter, unless any appropriation Act specifically provides to the contrary.

(c) Report to Congress by President; contents

Not later than June 1, 1976, the President shall submit a report to the Congress analyzing and detailing the amount and nature of any reimbursements made to any State for expenses described in subsection (a) of this section incurred prior to such date and specifically recommending whether authorizations of additional funds for direct grants to States are necessary or appropriate for the continued operation of the reimbursement provisions authorized by this section.

(Pub. L. 93-159, § 19, as added Pub. L. 94-163, title IV, § 462, Dec. 22, 1975, 89 Stat. 955.)

EFFECTIVE DATE

Section effective midnight Dec. 15, 1975, see section 463 of Pub. L. 94-163, set out as a note under section 753 of this title.

CHAPTER 16B—FEDERAL ENERGY ADMINISTRATION

SUBCHAPTER I—FEDERAL ENERGY ADMINISTRATION

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This chapter is referred to in section 798 of this title; title 42 sections 6273, 6274.

SUBCHAPTER I—FEDERAL ENERGY ADMINISTRATION

§ 761. Congressional declaration of purpose

(a) Objectives

The Congress hereby declares that the general welfare and the common defense and security require positive and effective action to conserve scarce energy supplies, to insure fair and efficient distribution of, and the maintenance of fair and reasonable consumer prices for, such supplies, to promote the expansion of readily usable energy sources, and to assist in developing policies and plans to meet the energy needs of the Nation.

(b) Necessity for reorganization

The Congress finds that to help achieve these objectives, and to assure a coordinated and effective approach to overcoming energy shortages, it is necessary to reorganize certain agencies and functions of the executive branch and to establish a Federal Energy Administration.

(c) Creation of Federal Energy Administration

The sole purpose of this chapter is to create an administration in the executive branch, called the Federal Energy Administration, to vest in the Administration certain functions as provided in this chapter, and to transfer to such Administration certain executive branch functions authorized by other laws, where such transfer is necessary on an interim basis to deal with the Nation's energy shortages.

(Pub. L. 93-275, § 2, May 7, 1974, 88 Stat. 97.)

EFFECTIVE AND TERMINATION DATES

Section 30 of Pub. L. 93-275 as amended by Pub. L. 94-332, June 30, 1976, 90 Stat. 784; Pub. L. 94-385, title I, § 112, Aug. 14, 1976, 90 Stat. 1132, provided that: "This Act [this chapter] shall become effective sixty days after the date of enactment [May 7, 1974] or sooner if the President publishes notice in the Federal Register. This Act shall terminate December 31, 1977.

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94-385, title I, § 101, Aug. 14, 1976, 90 Stat. 1127, provided that: "This title [enacting sections 787, 790 to 790h of this title, amending sections 757, 764, 766, 772, 774, 777 and 784 of this title and sections 5818, 6211 and 6295 of Title 42, and enacting provisions set out as notes under sections 753, 757, 761 and 790 of this title] may be cited as the 'Federal Energy Administration Act Amendments of 1976'."

SHORT TITLE

Section 1 of Pub. L. 93-275 provided that: "This Act [enacting this chapter and provisions set out as notes under this section] may be cited as the 'Federal Energy Administration Act of 1974'."

SEPARABILITY OF PROVISIONS

Section 27 of Pub. L. 93-275 provided that: "If any provision of this Act [this chapter], or the application thereof to any person or circumstance, is held invalid, the remainder of this Act [this chapter], and the application of such provision to other persons or circumstances, shall not be affected thereby."

AUTHORIZATION OF APPROPRIATIONS

Section 29 of Pub. L. 93-275, as amended by Pub. L. 94-385, title I, § 110, Aug. 14, 1976, 90 Stat. 1130, provided that:

"(a) There are authorized to be appropriated to the Federal Energy Administration the following sums:

"(1) subject to the restrictions specified in subsection (b), to carry out the functions identified as assigned to Executive Direction and Administration of the Federal Energy Administration as of January 1, 1976—

"(A) for the period beginning July 1, 1976, and ending September 30, 1976, not to exceed $8,655,000; and

"(B) for the fiscal year ending September 30, 1977, not to exceed $33,086,000.

"(2) to carry out the functions identified as assigned to the Office of Energy Policy and Analysis as of January 1, 1976—

"(A) for the period beginning July 1, 1976, and ending September 30, 1976, not to exceed $8,137,000; and

"(B) for the fiscal year ending September 30, 1977, not to exceed $34,971,000.

"(3) to carry out the functions identified as assigned to the Office of Regulatory Programs as of January 1, 1976—

"(A) for the period beginning July 1, 1976, and ending September 30, 1976, not to exceed $13,238,000; and

"(B) for the fiscal year ending September 30, 1977, not to exceed $62,459,000.

"(4) to carry out the functions identified as assigned to the Office of Conservation and the Environment as of January 1, 1976 (other than functions described in title II of the Energy Conservation and Production Act [section 6801 et seq. of Title 42])—

"(A) for the period beginning July 1, 1976, and ending September 30, 1976, not to exceed $7,386,000; and

"(B) for the fiscal year ending September 30, 1977, not to exceed $37,000,000.

"(5) to carry out the functions identified as assigned to the Office of Energy Resource Development as of January 1, 1976—

"(A) for the period beginning July 1, 1976, and ending September 30, 1976, not to exceed $3,052,000; and

"(B) for the fiscal year ending September 30, 1977, not to exceed $16,934,000.

"(6) to carry out the functions identified as assigned to the Office of International Energy Affairs as of January 1, 1976—

"(A) for the period beginning July 1, 1976, and ending September 30, 1976, not to exceed $300,000; and

"(B) for the fiscal year ending September 30, 1977, not to exceed $1,921,000.

"(7) subject to the restriction specified in subsection (c), to carry out a program to develop the policies, plans, implementation strategies, and program definitions for promoting accelerated utilization and widespread commercialization of solar energy and to provide overall coordination of Federal solar energy commercialization activities—

"(A) for the period beginning July 1, 1976, and ending September 30, 1976, not to exceed $500,000; and

"(B) for the fiscal year ending September 30, 1977, not to exceed $2,500,000.

"(8) for the purpose of permitting public use of the Project Independence Evaluation System pursuant to section 31 of this Act [section 787 of this title], not to exceed the aggregate amount of the fees estimated to be charged for such use.

"(b) The following restrictions shall apply to the authorization of appropriations specified in paragraph (1) of subsection (a)—

"(1) amounts to carry out the functions identified as assigned to the Office of Communications and Public Affairs as of January 1, 1976, shall not exceed $607,000 for the period beginning July 1, 1976, and ending September 30, 1976, and shall not exceed $2,036,000 for the fiscal year ending September 30, 1977; and

"(2) no amounts authorized to be appropriated in such paragraph may be used to carry out the functions identified as assigned to the Office of Nuclear Affairs as of January 1, 1976.

"(c) No amounts authorized to be appropriated in paragraph (7) of subsection (a) may be used to carry out solar energy research, development, or demonstration activities."

Advice and Consent of Senate Required for Appointment of Director of Energy Policy Office

Pub. L. 93-153, title IV, § 404, Nov. 16, 1973, 87 Stat. 590, directed that the Director of the Energy Policy Office be appointed by the President, by and with the advice and consent of the Senate, but that if any individual serving in this office on Nov. 16, 1973, were nominated for such position, he may continue to act unless and until such nomination were disapproved by the Senate.

Executive Order No. 11712

Ex. Ord. No. 11712, Apr. 18, 1973, 38 F.R. 9657, which related to the Special Committee on Energy and the National Energy Office, was superseded by Ex. Ord. No. 11726, June 29, 1973, 38 F.R. 17711, formerly set out as a note under section 791a of Title 16, Conservation.

Executive Order No. 11726

Ex. Ord. No. 11726, June 29, 1973, 38 F.R. 17711, formerly set out as a note under section 791a of Title 16, Conservation, which established the Energy Policy Office, was superseded by Ex. Ord. No. 11775, Mar. 26, 1974, 39 F.R. 11415, set out as a note under this section.

Ex. Ord. No. 11775, Abolition of Energy Policy Office

Ex. Ord. No. 11775, Mar. 26, 1974, 39 F.R. 11415, as amended by Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, provided:

Executive Order No. 11726 of June 29, 1973, established in the Executive Office of the President an Energy Policy Office. Executive Order No. 11748 of December 4, 1973 [set out as a note under section 754 of this title], established in the Executive Office of the President a Federal Energy Office. In order to permit an orderly transition, the Energy Policy Office was continued in being on an interim basis. That transition has been successfully completed and the Energy Policy Office should now be abolished.

Now, Therefore, by virtue of the authority vested in me as the President of the United States of America it is hereby ordered as follows:

Sec. 1. The Energy Policy Office is hereby abolished and Executive Order No. 11726 of June 29, 1973, is hereby superseded.

Sec. 2. [Revoked by Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185].

Sec. 3. The Administrator of General Services shall take such steps as may be necessary to wind up the affairs of the Energy Policy Office, and unobligated funds, if any, that may remain available to defray the expenses of that Office shall be returned to the Emergency Fund of the President.

Richard Nixon.

Ex. Ord. No. 11790. Effectuation of Chapter

Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, provided:

Under and by virtue of the authority vested in me by the Federal Energy Administration Act of 1974 (Public Law 93-275) [this chapter], the Emergency Petroleum Allocation Act of 1973 (Public Law 93-159; 87 Stat. 627) [15 U.S.C. § 751 et seq.], the Economic Stabilization Act of 1970, as amended [12 U.S.C. § 1904 note], the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, et seq.), and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

Section 1. Pursuant to the authority vested in me by section 30 of the Federal Energy Administration

Act of 1974 [set out as a note under this section], notice is hereby given that that act shall be effective as of June 27, 1974.

Sec. 2. (a) There is hereby delegated to the Administrator of the Federal Energy Administration (hereinafter referred to as the "Administrator"), all authority vested in the President by the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. § 751 et seq.].

(b) The Administrator shall submit to the Congress the reports required by section 4(c)(2) of the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. § 753(c)(2)].

Sec. 3. (a) There is hereby delegated to the Administrator the authority vested in the President by section 203(a)(3) of the Economic Stabilization Act of 1970, as amended [12 U.S.C. § 1904 note], to the extent such authority remains available under the provisions of section 218 of that act [12 U.S.C. § 1904 note].

(b) The authority under the Economic Stabilization Act of 1970, as amended [12 U.S.C. § 1904 note], that was delegated to the Administrator of the Federal Energy Office by the Chairman of the Cost of Living Council pursuant to section 4(b) of Executive Order No. 11748 of December 4, 1973, [set out as a note under section 754 of this title], is hereby transferred to the Administrator to the extent such authority remains available under the provisions of section 218 of that act [12 U.S.C. § 1904 note].

Sec. 4. Notwithstanding the provisions of Executive Order No. 10480, as amended [set out as a note under section 2153 of Title 50, Appendix, War and National Defense], the Administrator is authorized to exercise the authority vested in the President by the Defense Production Act of 1950, as amended [50 App. U.S.C. § 2061 et seq.], except section 708 thereof [50 App. U.S.C. § 2158], as it relates to the production, conservation, use, control, distribution, and allocation of energy, without approval, ratification, or other action of the President or any other official of the executive branch of the Government.

Sec. 5. (a) The Federal Energy Office established by Executive Order No. 11748 is hereby abolished, and that Executive order is hereby revoked.

(b) The authority vested in the Administrator of the Federal Energy Office to appoint a Deputy Administrator of that Office and to compensate that officer at the rate prescribed for officers and positions at level III of the Executive Schedule (5 U.S.C. 5314) is hereby revoked.

(c) All orders, regulations, circulars, or other directives issued and all other actions taken pursuant to any authority delegated or transferred to the Administrator by this order prior to and in effect on the date of this order are hereby confirmed and ratified, and shall remain in full force and effect, as if issued under this order, unless or until altered, amended, or revoked by the Administrator or by such competent authority as he may specify.

(d) All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with functions of the Administrator of the Federal Energy Office, as Administrator of that Office or as Chairman of the Oil Policy Committee, are hereby transferred to the Administrator.

Sec. 6. All authority delegated or transferred to the Administrator by this order may be further delegated, in whole or in part, by the Administrator to any other office or any department or agency of the United States, or, if authorized by law, to any State or officer thereof.

Sec. 7. (a) Proclamation No. 3279, as amended [19 U.S.C. § 1862 note], is hereby amended by striking "Secretary of the Interior" and "Secretary" wherever it appears in that Proclamation and inserting in lieu thereof "Administrator of the Federal Energy Administration."

(b) The Appeals Board established by the Secretary of the Interior pursuant to section 5(a) of Proclamation No. 3279, as amended [19 U.S.C. § 1862 note], is hereby continued until such time as the Administrator shall otherwise direct. The Administrator, at his pleasure, may designate a representative of the Federal Energy Administration to be a member of the Appeals Board in place of the representative of the Department of the Interior specified in the last sentence of section 5(a) of that proclamation.

(c) The Oil Policy Committee is hereby abolished and section 7, 8, and 9 of Proclamation No. 3279, as amended [19 U.S.C. § 1862 note], are hereby revoked. The functions of the Chairman of the Oil Policy Committee are hereby transferred to the Administrator.

(d) Section 10 of Proclamation No. 3279, as amended [19 U.S.C. § 1862 note], is hereby amended by inserting after "Cost of Living Council" the following "or the Federal Energy Administration, as the case may be,".

(e) Section 2 of Executive Order No. 11775 of March 26, 1974, is hereby revoked.

Sec. 8. Except as provided in section 5(d), so much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available, in connection with the functions transferred to the Administrator by this order or by the Federal Energy Administration Act of 1974 [this chapter] as the Director of the Office of Management and Budget shall determine shall be transferred at such time or times as the Director shall direct for use in connection with the functions so transferred.

Sec. 9. Nothing in this order shall be deemed to affect rights to reemployment under the provisions of section 5(a)(1)(B) of the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. § 754(a)(1)(B)], or section 212(g) of the Economic Stabilization Act of 1970, as amended [12 U.S.C. § 1904 note].

Sec. 10. The provisions of sections 2 through 9 of this order shall be effective as of June 27, 1974, the effective date of the Federal Energy Administration Act of 1974 [this chapter] specified in section 1 of this order.

Richard Nixon.

EXECUTIVE ORDER No. 11930

Ex. Ord. No. 11930, July 30, 1976, 41 F.R. 32399, formerly set out as a note under this section, which related to the establishment of the Federal Energy Office and the performance by the Office of the energy functions of the Federal Energy Administration, was revoked by Ex. Ord. No. 11933, Aug. 25, 1976, 41 F.R. 36641, set out as a note under this section.

EX. ORD. No. 11933. TERMINATION OF FEDERAL ENERGY OFFICE

Ex. Ord. No. 11933, Aug. 25, 1976, 41 F.R. 36641, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, it is hereby ordered as follows:

Section 1. Executive Order No. 11930 of July 30, 1976, which established the Federal Energy Office, is, consistent with the Federal Energy Administration Act Amendments of 1976 (Title I of Public Law 94-385) [for classification, see "Short Title of 1976 Amendment" note under this section], hereby revoked as of the date of its issuance.

Sec. 2. All orders, rules, regulations, rulings, interpretations, and other directives issued or pending, all rule making, judicial and administrative proceedings commenced or pending, all voluntary agreements, plans of action, and all other actions of whatever nature taken, continued, confirmed, ratified or made effective under Executive Order 11930, shall, in accordance with the Federal Energy Administration Act Amendments of 1976 [for classification, see "Short Title of 1976 Amendment" note under this section], be deemed to have been actions of the Federal Energy Administration and shall continue and remain in full force and effect, unless amended or revoked by the Federal Energy Administration.

Sec. 3. All authority and responsibility vested in the Federal Energy Administration by Executive order or proclamation prior to July 31, 1976 was not revoked by Executive Order No. 11930, subsists in the Federal Energy Administration, and shall be deemed to have been continuously vested in the Federal Energy Administration, whose existence has been retroactively extended by the Federal Energy Administration Act Amendments of 1976 [for classification, see "Short Title of 1976 Amendment" note under this section].

GERALD R. FORD.

§ 762. Establishment

There is hereby established an independent agency in the executive branch to be known as the Federal Energy Administration (hereinafter in this chapter referred to as the "Administration").

(Pub. L. 93-275, § 3, May 7, 1974, 88 Stat. 97.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 763. Officers

(a) Administrator; appointment and compensation; supervision and direction of Administration

There shall be at the head of the Administration an Administrator (hereinafter in this chapter referred to as the "Administrator"), who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall receive compensation at the rate prescribed for offices and positions at level II of the Executive Schedule (section 5313 of title 5). The Administration shall be administered under the supervision and direction of the Administrator.

(b) Functions of Administrator; delegation of functions

(1) The functions and powers of the Administration shall be vested in and exercised by the Administrator.

(2) The Administrator may, from time to time and to the extent permitted by law, consistent with the purposes of this chapter delegate such of his functions as he deems appropriate.

(c) Deputy Administrators; number; appointment and compensation

There shall be in the Administration two Deputy Administrators, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive compensation at the rate prescribed for offices and positions at level III of the Executive Schedule (section 5314 of title 5).

(d) Assistant Administrators; number; appointment and compensation

There are authorized to be in the Administration six Assistant Administrators, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive compensation at the rate prescribed for offices and positions at level IV of the Executive Schedule (section 5315 of title 5).

(e) General Counsel; appointment and compensation

There shall be in the Administration a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall receive compensation at the rate prescribed for offices and positions at level IV of the Executive Schedule (section 5315 of title 5).

(f) Additional officers; number; appointment and compensation; certain program assignments; competitive service provisions inapplicable

(1) There are authorized to be in the Administration not more than nine additional officers who shall be appointed by the Administrator and shall receive compensation at the rate prescribed for offices and positions at level V of the Executive Schedule (section 5316 of title 5).

(2) If any person, other than an officer within subsections (c), (d), or (e) of this section, is to be assigned principal responsibility for any program that shall be instituted in the Administration for either (i) allocation, (ii) pricing, (iii) rationing (if effected), or (iv) Federal and State coordination, he shall be one of the officers authorized by paragraph (1) of this subsection except that he shall be appointed by the President by and with the advice and consent of the Senate.

(3) Appointments to the positions described in this subsection may be made without regard to the provisions of title 5 governing appointments in the competitive service.

(g) Functions of officers

Subject to subsection (f) of this section, officers appointed pursuant to this section shall perform such functions as the Administrator shall specify from time to time.

(h) Order of succession

The Administrator shall designate the order in which the Deputy Administrators and other officials shall act for and perform the functions of the Administrator during his absence or disability or in the event of a vacancy in his office.

(i) Conflict of interest; report to Congress; publication in Federal Register; other laws applicable

(1) For the purposes of this chapter, section 208(b) of title 18, relating to conflicts of interest, can be invoked and implemented only by the Administrator personally. Such subsection shall not be invoked as to any person unless and until—

(A) the Congress has received, ten days prior thereto, a written report containing notice of the Administrator's intention so to invoke such subsection, a detailed statement of the subject matter concerning which a conflict exists; and in the case of an exemption set forth in clause (1) of such subsection, the nature of an officer's or employee's financial interest; or in the case of an exemption set forth in clause (2) of such subsection, the name and statement of financial interest of each person who will come within such exemption; and

(B) such written report is published in the Federal Register.

(2) Nothing contained in this subsection shall affect in any way the applicability or operation of other laws relating to officers and employees of the United States Government.

(j) Dual employment

No individual holding any of the positions described in subsections (a), (c), (d), and (e) of this section may also hold any other position in the executive branch during the same period.

(Pub. L. 93-275, § 4, May 7, 1974, 88 Stat. 97.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (f)(3), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May' 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 764. Specific functions and purposes

(a) Limitation on discretionary powers

Subject to the provisions and procedures set forth in this chapter, the Administrator shall be responsible for such actions as are taken to assure that adequate provision is made to meet the energy needs of the Nation. To that end, he shall make such plans and direct and conduct such programs related to the production, conservation, use, control, distribution, rationing, and allocation of all forms of energy as are appropriate in connection with only those authorities or functions—

(1) specifically transferred to or vested in him by or pursuant to this chapter;

(2) delegated to him by the President pursuant to specific authority vested in the President by law; and

(3) otherwise specifically vested in the Administrator by the Congress.

(b) Duties

To the extent authorized by subsection (a) of this section, the Administrator shall—

(1) advise the President and the Congress with respect to the establishment of a comprehensive national energy policy in relation to the energy matters for which the Administration has responsibility, and, in coordination with the Secretary of State, the integration of domestic and foreign policies relating to energy resource management;

(2) assess the adequacy of energy resources to meet demands in the immediate and longer range future for all sectors of the economy and for the general public;

(3) develop effective arrangements for the participation of State and local governments in the resolution of energy problems;

(4) develop plans and programs for dealing with energy production shortages;

(5) promote stability in energy prices to the consumer, promote free and open competition in all aspects of the energy field, prevent unreasonable profits within the various segments of the energy industry, and promote free enterprise;

(6) assure that energy programs are designed and implemented in a fair and efficient manner so as to minimize hardship and inequity while assuring that the priority needs of the Nation are met;

(7) develop and oversee the implementation of equitable voluntary and mandatory energy conservation programs and promote efficiencies in the use of energy resources;

(8) develop and recommend policies on the import and export of energy resources;

(9) collect, evaluate, assemble, and analyze energy information on reserves, production, demand, and related economic data;

(10) work with business, labor, consumer and other interests and obtain their cooperation;

(11) in administering any pricing authority, provide by rule, for equitable allocation of all component costs of producing propane gas. Such rules may require that (a) only those costs directly related to the production of propane may be allocated by any producer to such gas for purposes of establishing any price for propane, and (b) prices for propane shall be based on the prices for propane in effect on May 15, 1973. The Administrator shall not allow costs attributable to changes in ownership and movement of propane gas where, in the opinion of the Administrator, such changes in ownership and movement occur primarily for the purpose of establishing a higher price; and

(12) perform such other functions as may be prescribed by law.

(c) Exercise of delegated discretion concerning exemptions

(1) The Administrator shall not exercise the discretion delegated to him by the President, pursuant to section 754(b) of this title, to submit to the Congress as one energy action any amendment to the regulation under section 753(a) of this title, pursuant to section 760a of this title, which amendment exempts any oil, refined petroleum product, or refined product category from both the allocation and pricing provisions of the regulation under section 753 of this title.

(2) Nothing in this subsection shall prevent the Administrator from concurrently submitting an energy action relating to price together with an energy action relating to allocation of the same oil, refined petroleum product, or refined product category.

(Pub. L. 93-275, § 5, May 7, 1974, 88 Stat. 98; Pub. L. 94-385, title I, § 102, Aug. 14, 1976, 90 Stat. 1127.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94-385 added subsec. (c).

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 765. Transfer of functions

(a) There are hereby transferred to and vested in the Administrator all functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department—

(1) as relate to or are utilized by the Office of Petroleum Allocation;

(2) as relate to or are utilized by the Office of Energy Conservation;

(3) as relate to or are utilized by the Office of Energy Data and Analysis; and

(4) as relate to or are utilized by the Office of Oil and Gas.

(b) There are hereby transferred to and vested in the Administrator all functions of the Chairman of the Cost of Living Council, the Executive Director of the Cost of Living Council, and the Cost of Living Council, and officers and components thereof, as relate to or are utilized by the Energy Division of the Cost of Living Council.

(Pub. L. 93-275, § 6, May 7, 1974, 88 Stat. 100.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

COST OF LIVING COUNCIL

The Cost of Living Council was abolished July 1, 1974, by Ex. Ord. No. 11788, § 1, June 18, 1974, 39 F.R. 22113, set out as a note under section 1904 of Title 12, Banks and Banking.

§ 766. Administrative provisions

(a) Officers and employees; appointment, employment, and compensation; authority and duties; positions in GS-16, 17, and 18; classification standards and procedures applicable; duration of authority; competitive service provisions partly inapplicable

(1) The Administrator may appoint, employ, and fix the compensation of such officers and employees, including attorneys, as are necessary to perform the functions vested in him, and prescribe their authority and duties. In addition to the number of positions which may be placed in GS-16, 17, and 18 under existing law, not to exceed 91 positions may be placed in GS-16, 17, and 18 to carry out the functions under this chapter: *Provided,* That the total number of positions within the Administration in GS-16, 17, 18 shall not exceed 105: *And provided further,* That, except as provided in paragraph (2) of this subsection, the authority under this subsection shall be subject to the standards and procedures prescribed under chapter 51 of title 5, and shall continue only for the duration of the exercise of functions under this chapter.

(2) Twenty-five of the GS-16, 17, and 18 positions authorized by paragraph (1) of this subsection may be filled without regard to the provisions of title 5 governing appointments in the competitive service.

(b) Experts and consultants; employment and compensation

The Administrator may employ experts, expert witnesses, and consultants in accordance with section 3109 of title 5, and compensate such persons at rates not in excess of the maximum daily rate prescribed for GS-18 under section 5332 of title 5 for persons in Government service employed intermittently.

(c) Rules, regulations, and procedures; Environmental Protection Agency, notification; quality of environment, publication of comments; emergency preclusion of review by Environmental Protection Agency

The Administrator may promulgate such rules, regulations, and procedures as may be necessary to carry out the functions vested in him: *Provided,* That:

(1) The Administrator shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published together with publication of notice of the proposed action.

(2) The review required by paragraph (1) of this subsection may be waived for a period of fourteen days if there is an emergency situation which, in the judgment of the Administrator, requires making effective the action proposed to be taken at a date earlier than would permit the Administrator of the Environmental Protection Agency the five working days opportunity for prior comment required by paragraph (1). Notice of any such waiver shall be given to the Administrator of the Environmental Protection Agency and filed with the Federal Register with the publication of notice of proposed or final agency action and shall include an explanation of the reasons for such waiver, together with supporting data and a description of the factual situation in such detail as the Administrator determines will apprise such agency and the public of the reasons for such waiver.

The review required by paragraphs (1) and (2) of this subsection may be waived for a period of fourteen days if there is an emergency situation which, in the judgment of the Administrator, requires immediate action.

(d) Interagency cooperation; reimbursement provisions

The Administrator may utilize, with their consent, the services, personnel, equipment, and facilities of Federal, State, regional, and local public agencies and instrumentalities, with or without reimbursement therefor, and may transfer funds made available pursuant to this chapter, to Federal, State, regional, and local public agencies and instrumentalities, as reimbursement for utilization of such services, personnel, equipment, and facilities.

(e) Seal; judicial notice

The Administrator shall cause a seal of office to be made for the Administration of such design as he shall approve, and judicial notice shall be taken of such seal.

(f) Gifts; acceptance

The Administrator may accept unconditional gifts or donations of money or property, real, personal, or mixed, tangible or intangible.

(g) Contract authority

The Administrator may enter into and perform contracts, leases, cooperative agreements, or other similar transactions with any public agency or instrumentality or with any person, firm, association, corporation, or institution.

(h) Other necessary activities

The Administrator may perform such other activities as may be necessary for the effective fulfillment of his administrative duties and functions.

(i) Rules, regulations, or orders; publication in Federal Register; comments; waiver of comment period; public notice, publication; views, oral presentation; transcript; adjustments; procedures respecting application and operation; administrative and judicial review; requests for action; public information; written opinions; hearing requirements in geographic area affected by rules and regulations; definitions; jurisdiction of courts of appeals and district courts; defenses in any proceeding; removal of Federal questions; concurrent jurisdiction; procedures for State or local government agencies

(1)(A) Subject to paragraphs (B), (C), and (D) of this subsection, the provisions of subchapter II of chapter 5 of title 5 shall apply to any rule or regulation, or any order having the applicability and effect of a rule as defined in section 551(4) of title 5, issued pursuant to this chapter, including any such rule, regulation, or order of a State or local government agency, or officer thereof, issued pursuant to authority delegated by the Administrator.

(B) Notice of any proposed rule, regulation, or order described in paragraph (A) shall be given by publication of such proposed rule, regulation, or order in the Federal Register. In each case, a minimum of ten days following such publication shall be provided for opportunity to comment; except that the requirements of this paragraph as to time of notice and opportunity to comment may be waived where strict compliance is found to cause serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order. In addition, public notice of all rules, regulations, or orders described in paragraph (A) which are promulgated by officers of a State or local government agency shall to the maximum extent practicable be achieved by publication of such rules, regulations, or orders in a sufficient number of newspapers of statewide circulation calculated to receive widest possible notice.

(C) In addition to the requirements of paragraph (B), if any rule, regulation, or order described in paragraph (A) is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be afforded. To the maximum extent practicable, such opportunity shall be afforded prior to the issuance of such rule, regulation, or order, but in all cases such opportunity shall be afforded no later than forty-five days after the issuance of any such rule, regulation, or order. A transcript shall be kept of any oral presentation.

(D) Any officer or agency authorized to issue the rules, regulations, or orders described in paragraph (A) shall provide for the making of such adjustments, consistent with the other purposes of this chapter, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens and shall, by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, rescission of, exception to, or exemption from, such rules, regulations, and orders. Such officer or agency shall, within ninety days after August 14, 1976, establish criteria and guidelines by which such special hardship, inequity, or unfair distribution of burdens shall be evaluated. Such officer or agency shall additionally insure that each decision on any application or petition requesting an adjustment shall specify the standards of hardship, inequity, or unfair distribution of burden by which any disposition was made, and the specific application of such standards to the facts contained in any such application or petition. If any person is aggrieved or adversely affected by a denial of a request for adjustment under the preceding sentences, he may request a review of such denial by the agency and may obtain judicial review in accordance with paragraph (2) of this subsection when such a denial becomes final. The agency shall, by rule, establish appropriate procedures, including a hearing when requested, for review of a denial, and where deemed advisable by the agency, for considering other requests for action under this paragraph, except that no review of a denial under this subparagraph shall be controlled by the same officer denying the adjustment pursuant to this subparagraph.

(E) In addition to the requirements of section 552 of title 5, any agency authorized to issue the rules, regulations, or orders described in paragraph (A) shall make available to the public all internal rules and guidelines which may form the basis, in whole or in part, for any such rule, regulation, or order with such modifications as are necessary to insure confidentiality protected under such section 552. Such agency shall, upon written request of a petitioner filed after any grant or denial of a request for exception or exemption from rules or orders, furnish the petitioner with a written opinion setting forth applicable facts and the legal basis in support of such grant or denial. Such opinions shall be made available to the petitioner and the public within thirty days of such request, with such modifications as are necessary to insure confidentiality of information protected under such section 552.

(F)(i) With respect to any rule or regulation of the Administrator the effects of which, except for indirect effects of an inconsequential nature, are confined to—

(I) a single unit of local government or the residents thereof;

(II) a single geographic area within a State or the residents thereof; or

(III) a single State or the residents thereof;

the Administrator shall, in any case where he is required by law, or where he determines, to afford an opportunity for a hearing or the oral presentation of views, provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geographic area, or State described in subclauses (I) through (III), as the case may be.

(ii) For purposes of this subparagraph—

(I) the term "unit of local government" means a county, municipality, town, township, village, or other unit of general government below the State level; and

(II) the term "geographic area within a State" means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.

(iii) Nothing in this subparagraph shall be construed as requiring a hearing or an oral presentation of views where none is required by law or, in the absence of such a requirement, where the Administrator determines a hearing or oral presentation is not appropriate.

(2)(A) Judicial review of administrative rulemaking of general and national applicability done under this chapter, except that done pursuant to the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.], may be obtained only by filing a petition for review in the United States Court of Appeals for the District of Columbia within thirty days from the date of promulgation of any such rule, regulation, or order, and judicial review of administrative rulemaking of general, but less than national, applicability done under this chapter, except that done pursuant to the Emergency Petroleum Allocation Act of 1973, may be obtained only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within thirty days from the date of promulgation of any such rule, regulation, or order, the appropriate circuit being defined as the circuit which contains the area or the greater part of the area within which the rule, regulation, or order is to have effect.

(B) Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising under this chapter, or under rules, regulations, or orders issued thereunder, except any actions taken to implement or enforce any rule, regulation, or order by any officer of a State or local government agency under this chapter: *Provided*, That nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the unconstitutionality of this chapter or the validity of action taken by any agency under this chapter). If in any such proceeding an issue by way of defense is raised based on the unconstitutionality of this chapter or the validity of agency action under this chapter, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (1) any appropriate State court, or (2) without regard to the amount in controversy, the district courts of the United States.

(3) The Administrator may by rule prescribe procedures for State or local government agencies authorized by the Administrator to carry out functions under this chapter. Such procedures shall apply to such agencies in lieu of paragraph (1) of this subsection, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) at least ten days before taking the action.

(j) Information for independent regulatory agencies

The Administration, in connection with the exercise of the authority under this chapter, shall be considered an independent Federal regulatory agency for the purposes of sections 3502 and 3512 of title 44.

(k) Limitation on enforcement authority of Administrator

The Administrator or his delegate may not exercise discretion to maintain a civil action (other than an action for injunctive relief) or issue a remedial order against any person whose sole petroleum industry operation relates to the marketing of petroleum products, for any violation of any rule or regulation if—

(1) such civil action or order is based upon a retroactive application of such rule or regulation or is based upon a retroactive interpretation of such rule or regulation; and

(2) such person relied in good faith upon rules, regulations, or rulings interpreting such rules or regulations, in effect on the date of the violation.

(Pub. L. 93-275, § 7, May 7, 1974, 88 Stat. 100; Pub. L. 94-385, title I, §§ 103-106, Aug. 14, 1976, 90 Stat. 1127-1129.)

REFERENCES IN TEXT

Grades GS-16, 17, and 18, referred to in subsecs. (a) and (b), are contained in the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a)(2), are classified to section 3301 et seq. of title 5.

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (i)(2)(A), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, which is classified generally to chapter 16A (§ 751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 751 of this title and Tables volume.

AMENDMENTS

1976—Subsec. (c). Pub. L. 94-385, § 103, struck out provisions relating to review of rules, regulations and procedures by the Cost of Living Council and redistributed remaining provisions as pars. (1) and (2).

Subsec. (i)(1)(D). Pub. L. 94-385, § 104, added provisions which require any officer or agency authorized to issue rules, regulations or orders to establish criteria and guidelines for evaluation of special hardship situations, to include in every decision the standards applied in the disposition of such situations, and requiring the hearing upon request of the aggrieved party to be heard by an officer other than the one denying the adjustment.

Subsec. (i)(1)(F). Pub. L. 94-385, § 105, added subsec. (i)(1)(F).

Subsec. (k). Pub. L. 94-385, § 106, added subsec. (k).

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

COST OF LIVING COUNCIL

The Cost of Living Council was abolished July 1, 1974, by Ex. Ord. No. 11788, § 1, June 18, 1974, 39 F.R. 22113, set out as a note under section 1904 of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 767, 771, 780, 790b of this title.

§ 767. Transitional and savings provisions

(a) Continuance of effective status

All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, by any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this chapter, and

(2) which are in effect at the time this chapter takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Administrator, other authorized officials, a court of competent jurisdiction, or by operation of law.

(b) Pending proceedings; orders, appeals, payments

This chapter shall not affect any proceeding pending, at the time this chapter takes effect, before any department or agency (or component thereof) regarding functions which are transferred by this chapter; but such proceedings, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals (except as provided in section 766(i)(2) of this title) shall be taken therefrom, and payments shall be made pursuant to such orders, as if this chapter had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions, and to the same extent, that such proceeding could have been discontinued if this chapter had not been enacted.

(c) Commencement of suits before effective date

Except as provided in subsection (e) of this section—

(1) the provisions of this chapter shall not affect suits commenced prior to the date this chapter takes effect, and

(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this chapter had not been enacted.

(d) Litigation; abatement prohibition; Federal parties

No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this chapter, shall abate by reason of the enactment of this chapter. No cause of action by or against any department or agency, functions of which are transferred by this chapter, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this chapter. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or such official as may be appropriate and, in any litigation pending when this chapter takes effect, the court may at any time, on its own motion or that of any party, enter any order which will give effect to the provisions of this section.

(e) Substitution of parties

If, before the date on which this chapter takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this chapter any function of such department, agency, or officer is transferred to the Administrator, or any other official, then such suit shall be continued as if this chapter had not been enacted, with the Administrator, or other official as the case may be, substituted.

(f) Judicial review; other requirements respecting notices, hearings, action upon record, and administrative review; conflicting provisions

Final orders and actions of any official or component in the performance of functions transferred by this chapter shall be subject to judicial review to the same extent and in the same manner as if such orders or actions had been made or taken by the officer, department, agency, or instrumentality in the performance of such functions immediately preceding the effective date of this chapter. Any statutory requirements relating to notices, hearings, action upon the record, or administrative review that apply to any function transferred or delegated by this chapter shall apply to the performance of those functions by the Administrator, or any officer or component of the Administration. In the event of any inconsistency between the provisions of this subsection and section 766 of this title, the provisions of section 766 of this title shall govern.

(g) References in other laws deemed references to transferee offices or officers

With respect to any function transferred by this chapter and performed after the effective date of this chapter, reference in any other law to any department or agency, or any officer or office, the functions of which are so transferred, shall be deemed to refer to the Administration, Administrator, or other office or officers in which this chapter vests such functions.

(h) Presidential functions, authorities, and delegations unaffected

Nothing contained in this chapter shall be construed to limit, curtail, abolish, or terminate any function of the President which he had immediately before the effective date of this chapter; or to limit, curtail, abolish, or terminate his authority to perform such function; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegations of functions.

(i) References to other provisions deemed references to such provisions as amended or supplemented

Any reference in this chapter to any provision of law shall be deemed to include, as appropriate, references thereto as now or hereafter amended or supplemented.

(Pub. L. 93-275, § 8, May 7, 1974, 88 Stat. 103.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 768. Incidental transfers

The Director of the Office of Management and Budget is authorized and directed to make such additional incidental dispositions of personnel, personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with functions which are transferred by or which revert under this chapter, as the Director deems necessary and appropriate to accomplish the intent and purpose of this chapter.

(Pub. L. 93-275, § 9, May 7, 1974, 88 Stat. 105.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 769. Definitions

As used in this chapter—

(1) any reference to "function" or "functions" shall be deemed to include references to duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and

(2) any reference to "perform" or "performance", when used in relation to functions, shall be deemed to include the exercise of power, authority, rights, and privileges.

(Pub. L. 93-275, § 10, May 7, 1974, 88 Stat. 105.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 770. Appointments

(a) Interim funds

Funds available to any department or agency (or any official or component thereof), and lawfully authorized for any of the specific functions which are transferred to the Administrator by this chapter, may, with the approval of the President, be used to pay the compensation and expenses of any officer appointed pursuant to this chapter until such times as funds for that purpose are otherwise available.

(b) Interim appointments

In the event that any officer required by this chapter to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this chapter, the President may designate any officer, whose appointment was required to be made by and with the advice and consent of the Senate and who was such an officer immediately prior to the effective date of this chapter, or any officer who was performing essentially the same functions immediately prior to the effective date of this chapter to act in such office until the office is filled as provided in this chapter: *Provided*, That any officer acting pursuant to the provisions of this subsection may act no longer than a period of thirty days unless during such period his appointment as such an officer is submitted to the Senate for its advice and consent.

(c) Nontemporary personnel; transferee rights for one year

Transfer of nontemporary personnel pursuant to this chapter shall not cause any such employee to be separated or reduced in grade or compensation, except for cause, for one year after such transfer.

(d) Compensation of new position at not less than provided for in Executive Schedule for previous position in cases of appointees without break in service

Any person who, on the effective date of this chapter, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, and who, without a break in service, is appointed in the Administration to a position having duties comparable to those performed immediately preceding his appointment, shall continue to be compensated in his new position at not less than the rate provided for his previous position.

(Pub. L. 93-275, § 11, May 7, 1974, 88 Stat. 105.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 771. Comptroller General, powers and duties

(a) Scope of activities; monitoring activity; data to Comptroller General from Administration; reports and recommendations to Congress

For the duration of this chapter, the Comptroller General of the United States shall monitor and evaluate the operations of the Administration including its reporting activities. The Comptroller General shall (1) conduct studies of existing statutes and regulations governing the Administration's programs; (2) review the policies and practices of the Administration; (3) review and evaluate the procedures followed by the Administrator in gathering, analyzing, and interpreting energy statistics, data, and information related to the management and conservation of energy, including but not limited to data related to energy costs, supply, demand, industry structure, and environmental impacts; and (4) evaluate particular projects or programs. The Comptroller General shall have access to such data within the possession or control of the Administration from any public or private source whatever, notwithstanding the provisions of any other law, as are necessary to carry out his responsibilities under this chapter and shall report to the Congress at such times as he deems appropriate with respect to the Administration's programs, including his recommendations for modifications in existing laws, regulations, procedures, and practices.

(b) Access to material and written energy information from owners or operators of facilities or business premises engaged in energy matters; scope of information

The Comptroller General or any of his authorized representatives in carrying out his responsibilities under this section may request access to any books, documents, papers, statistics, data, records, and information of any person owning or operating facilities or business premises who is engaged in any phase of energy supply or major energy consumption, where such material relates to the purposes of this chapter, including but not limited to energy costs, demand, supply, industry structure, and environmental impacts. The Comptroller General may request such person to submit in writing such energy information as the Comptroller General may prescribe.

(c) Access to material and information from recipients of Federal funds or assistance under Federal transactions

The Comptroller General of the United States, or any of his duly authorized representatives, shall have access to and the right to examine any books, documents, papers, records, or other recorded information of any recipients of Federal funds or assistance under contracts, leases, cooperative agreements, or other transactions entered into pursuant to subsection (d) or (g) of section 766 of this title which in the opinion of the Comptroller General may be related or pertinent to such contracts, leases, cooperative agreements, or similar transactions.

(d) Subpenas; committee resolution; issuance; production of evidence

To assist in carrying out his responsibilities under this section, the Comptroller General may, with the concurrence of a duly established committee of Congress having legislative or investigative jurisdiction over the subject matter and upon the adoption of a resolution by such a committee which sets forth specifically the scope and necessity therefor, and the specific identity of those persons from whom information is sought, sign and issue subpenas requiring the production of the books, documents, papers, statistics, data, records, and information referred to in subsection (b) of this section.

(e) Enforcement of subpenas; jurisdiction; order for production of evidence; contempt

In case of disobedience to a subpena issued under subsection (d) of this section, the Comptroller General may invoke the aid of any district court of the United States in requiring the production of the books, documents, papers, statistics, data, records, and information referred to in subsection (b) of this section. Any district court of the United States within the jurisdiction where such person is found or transacts business may, in case of contumacy or refusal to obey a subpena issued by the Comptroller General, issue an order requiring such person to produce the books, documents, papers, statistics, data, records, or information; and any failure to obey such order of the court shall be punished by the court as a contempt thereof.

(f) Availability to public of reports submitted to Congress; prohibited disclosures: confidential information and trade secrets; preservation of confidentiality in disclosures to Government

Reports submitted by the Comptroller General to the Congress pursuant to this section shall be available to the public at reasonable cost and upon identifiable request. The Comptroller General may not disclose to the public any information which concerns or relates to a trade secret or other matter referred to in section 1905 of title 18, except that such information shall be disclosed by the Comptroller General or the Administrator, in a manner designed to preserve its confidentiality—

(1) to other Federal Government departments, agencies, and officials for official use upon request;

(2) to committees of Congress upon request; and

(3) to a court in any judicial proceeding under court order.

(Pub. L. 93-275, § 12, May 7, 1974, 88 Stat. 106.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 772. Administrator's information-gathering power

(a) Comprehensive and particular energy information; categorical groupings; monitoring activity and policy guidance

The Administrator shall collect, assemble, evaluate, and analyze energy information by categorical groupings, established by the Administrator, of sufficient comprehensiveness and particularity to permit fully informed monitoring and policy guidance with respect to the exercise of his functions under this chapter.

(b) Information and data to Administrator from owners or operators of facilities or business premises engaged in energy matters

All persons owning or operating facilities or business premises who are engaged in any phase of energy supply or major energy consumption shall make available to the Administrator such information and periodic reports, records, documents, and other data, relating to the purposes of this chapter, including full identification of all data and projections as to source, time, and methodology of development, as the Administrator may prescribe by regulation or order as necessary or appropriate for the proper exercise of functions under this chapter.

(c) General or special orders for filing reports or answers in writing to specific questions, surveys, or questionnaires; oath or otherwise; filing period

The Administrator may require, by general or special orders, any person engaged in any phase of energy supply or major energy consumption to file with the Administrator in such form as he may prescribe, reports or answers in writing to such specific questions, surveys, or questionnaires as may be necessary to enable the Administrator to carry out his functions under this chapter. Such reports and answers shall be made under oath, or otherwise, as the Administrator may prescribe, and shall be filed with the Administrator within such reasonable period as he may prescribe.

(d) Investigations, physical inspections, inventories and samples, copies, and interrogations

The Administrator, to verify the accuracy of information he has received or otherwise to obtain information necessary to perform his functions under this chapter, is authorized to conduct investigations, and in connection therewith, to conduct, at reasonable times and in a reasonable manner, physical inspections at energy facilities and business premises, to inventory and sample any stock of fuels or energy sources therein, to inspect and copy records, reports, and documents from which energy information has been or is being compiled, and to question such persons as he may deem necessary.

(e) Subpenas; attendance and testimony of witnesses; production of evidence; enforcement; judicial orders; contempt

(1) The Administrator, or any of his duly authorized agents, shall have the power to require by subpena the attendance and testimony of witnesses, and the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence which the Administrator is authorized to obtain pursuant to this section.

(2) Any appropriate United States district court may, in case of contumacy or refusal to obey a subpena issued pursuant to this section, issue an order requiring the party to whom such subpena is directed to appear before the Administration and to give testimony touching on the matter in question, or to produce any matter described in paragraph (1) of this subsection, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(f) Federal information concerning energy resources on Federal lands; scope of information

The Administrator shall collect from departments, agencies and instrumentalities of the executive branch of the Government (including independent agencies), and each such department, agency, and instrumentality is authorized and directed to furnish, upon his request, information concerning energy resources on lands owned by the Government of the United States. Such information shall include, but not be limited to, quantities of reserves, current or proposed leasing agreements, environmental considerations, and economic impact analyses.

(g) Maintenance of records and accounts

With respect to any person who is subject to any rule, regulation, or order promulgated by the Administrator or to any provision of law the administration of which is vested in or transferred or delegated to the Administrator, the Administrator may require, by rule, the keeping of such accounts or records as he determines are necessary or appropriate for determining compliance with such rule, regulation, order, or any applicable provision of law.

(h) Alleviation of reporting burdens for small businesses

In exercising his authority under this chapter and any other provision of law relating to the collection of energy information, the Administrator shall take into account the size of businesses required to submit reports with the Administrator so as to avoid, to the greatest extent practicable, overly burdensome reporting requirements on small marketers and distributors of petroleum products and other small business concerns required to submit reports to the Administrator.

(i) Penalties for failure to file information

Any failure to make information available to the Administrator under subsection (b) of this section, any failure to comply with any general or special order under subsection (c) of this section, or any failure to allow the Administrator to act under subsection (d) of this section shall be subject to the same penalties as any violation of section 796 of this title or any rule, regulation, or order issued under such section.

(Pub. L. 93-275, § 13, May 7, 1974, 88 Stat. 107; Pub. L. 94-385, title I, §§ 107, 108, Aug. 14, 1976, 90 Stat. 1129.)

AMENDMENTS

1976—Subsecs. (g), (h). Pub. L. 94-385, § 107, added subsecs. (g) and (h).

Subsec. (i). Pub. L. 94-385, § 108, added subsec. (i).

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 774, 790 of this title.

§ 773. Public disclosure of information

(a) Analyses, data, information, reports, and summaries; objectives of disclosure

The Administrator shall make public, on a continuing basis, any statistical and economic analyses, data, information, and whatever reports and summaries are necessary to keep the public fully and currently informed as to the nature, extent, and projected duration of shortages of energy supplies, the impact of such shortages, and the steps being taken to minimize such impacts.

(b) Freedom of Information Act applicable; disclosure of confidential information or trade secrets; disclosure of matter included in public annual reports to Securities and Exchange Commission and matter excepted from such disclosure

Subject to the provisions of this chapter, section 552 of title 5 shall apply to public disclosure of information by the Administrator: *Provided,* That notwithstanding said section, the provisions of section 1905 of title 18, or any other provision of law, (1) all matters reported to, or otherwise obtained by, any person exercising authority under this chapter containing trade secrets or other matter referred to in section 1905 of title 18, may be disclosed to other persons authorized to perform functions under this chapter solely to carry out the purposes of the chapter, or when relevant in any proceeding under this chapter, and (2) the Administrator shall disclose to the public, at a reasonable cost, and upon a request which reasonably describes the matter sought, any matter of the type which could not be excluded from public annual reports to the Securities and Exchange Commission pursuant to section 78m or 78*o*(d) of this title by a business enterprise exclusively engaged in the manufacture or sale of a single product, unless such matter concerns or relates to the trade secrets, processes, operations, style of work, or apparatus of a business enterprise.

(c) Guidelines and procedures for handling information pertaining to individuals; access of individuals to such personal information

To protect and assure privacy of individuals and confidentiality of personal information, the Administrator is directed to establish guidelines and procedures for handling any information which the Administration obtains pertaining to individuals. He shall provide, to the extent practicable, in such guidelines and procedures a method for allowing any such individual to gain access to such information pertaining to himself.

(Pub. L. 93-275, § 14, May 7, 1974, 88 Stat. 108.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 6274.

§ 774. Reports and recommendations

(a) Administrator's initial submittal to President and Congress

Not later than one year after the effective date of this chapter, the Administrator shall submit a report to the President and Congress which will provide a complete and independent analysis of actual oil and gas reserves and resources in the United States and its Outer Continental Shelf, as well as of the existing productive capacity and the extent to which such capacity could be increased for crude oil and each major petroleum product each year for the next ten years through full utilization of available technology and capacity. The report shall also contain the Administration's recommendations for improving the utilization and effectiveness of Federal energy data and its manner of collection. The data collection and analysis portion of this report shall be prepared by the Federal Trade Commission for the Administration. Unless specifically prohibited by law, all Federal agencies shall make available estimates, statistics, data and other information in their files which, in the judgment of the Commission or Administration, are necessary for the purposes of this subsection.

(b) Administrator's annual report to Congress; contents

The Administrator shall prepare and submit directly to the Congress and the President every year after May 7, 1974, a report which shall include—

(1) a review and analysis of the major actions taken by the Administrator;

(2) an analysis of the impact these actions have had on the Nation's civilian requirements for energy supplies for materials and commodities;

(3) a projection of the energy supply for the midterm and long term for each of the major types of fuel and the potential size and impact of any anticipated shortages, including recommendations for measures to—

(A) minimize deficiencies of energy supplies in relation to needs;

(B) maintain the health and safety of citizens;

(C) maintain production and employment at the highest feasible level;

(D) equitably share the burden of shortages among individuals and business firms; and

(E) minimize any distortion of voluntary choices of individuals and firms;

(4) a summary listing of all recipients of funds and the amount thereof within the preceding period; and

(5) a summary listing of information-gathering activities conducted under section 772 of this title.

(6) an analysis of the energy needs of the United States and the methods by which such needs can be met, including both tax and nontax proposals and energy conservation strategies.

In the first annual report submitted after August 14, 1976, the Administrator shall include in such report with respect to the analysis referred to in paragraph (6) a specific discussion of the utility and relative benefits of employing a Btu tax as a means for obtaining national energy goals.

(c) Citizen fuel use; summer guidelines

Not later than thirty days after the effective date of this chapter, the Administrator shall issue preliminary summer guidelines for citizen fuel use.

(d) Administrator's interim reports to Congress

The Administrator shall provide interim reports to the Congress from time to time and when requested by committees of Congress.

(e) Energy needs analysis; time for submission; contents; continuation of analysis after termination of Administration

The analysis referred to in subsection (b)(6) of this section shall include, for each of the next five fiscal years following the year in which the annual report is submitted and for the tenth fiscal year following such year—

(1) the effect of various conservation programs on such energy needs;

(2) the alternate methods of meeting the energy needs identified in such annual report and of—

(A) the relative capital and other economic costs of each such method;

(B) the relative environmental, national security, and balance-of-trade risks of each such method;

(C) the other relevant advantages and disadvantages of each such method; and

(3) recommendations for the best method or methods of meeting the energy needs identified in such annual report and for legislation needed to meet those needs.

Notwithstanding the termination of this chapter, the President shall designate an appropriate Federal agency to conduct the analysis specified in subsection (b)(6) of this section.

(Pub. L. 93-275, § 15, May 7, 1974, 88 Stat. 108; Pub. L. 94-385, title I, § 109(a)-(c), Aug. 14, 1976, 90 Stat. 1130.)

REFERENCES IN TEXT

For effective date of this chapter, referred to in subsecs. (a) and (c), see "Effective and Termination Dates" note under this section.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-385, § 109(a), struck out subsec. (a) relating to submission of a report by the President to Congress with recommendations for disposition, continuation, or reorganization of Energy Administration and organization of the Federal Government for the management of energy and natural resources policies and programs. Former subsec. (b) redesignated (a).

Subsec. (b). Pub. L. 94-385, § 109(a)(2), (b), redesignated former subsec. (c) as (b) and, as so redesignated, added par. (6) and provisions requiring Administrator to include in report a discussion on benefits of employing a utility and Btu tax as a means for obtaining national energy goals. Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 94-385, § 109(a)(2), redesignated former subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 94-385, § 109(a)(2), redesignated former subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 94-385, § 109(a)(2), (c), added subsec. (e). Former subsec. (e) redesignated (d).

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 sections 5819, 6397.

§ 775. Sex discrimination; enforcement; other legal remedies

No individual shall on the grounds of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under this chapter. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.]. However, this remedy is not exclusive and will not prejudice or remove any other legal remedies available to any individual alleging discrimination.

(Pub. L. 93-275, § 16, May 7, 1974, 88 Stat. 109.)

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in text, is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title VI of the Civil Rights Act of 1964 is classified to subchapter V (§ 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables volume.

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 776. Advisory committees

(a) Representation of points of view and functions, government, and regulatory utility commissions

Whenever the Administrator shall establish or utilize any board, task force, commission, committee, or similar group, not composed entirely of full-time Government employees, to advise with respect to, or to formulate or carry out, any agreement or plan of action affecting any industry or segment thereof, the Administrator shall endeavor to insure that each such group is reasonably representative of the various points of view and functions of the industry and users affected, including those of residential, commercial, and industrial consumers, and shall include, where appropriate, representation from both State and local governments, and from representatives of State regulatory utility commissions, selected after consultation with the respective national associations.

(b) Public meetings; participation of interested persons; closed meetings; determination, national security, reasons

Each meeting of such board, task force, commission, committee, or similar group, shall be open to the public, and interested persons shall be permitted to attend, appear before, and file statements with, such group, except that the Administrator may determine that such meeting shall be closed in the interest of national security. Such determination shall be in writing, shall contain a detailed explanation of reasons in justification of the determination, and shall be made available to the public.

(c) Public inspection and copying of documents

All records, reports, transcripts, memoranda, and other documents, which were prepared for or by such group, shall be available for public inspection and copying at a single location in the offices of the Administration.

(d) Federal Advisory Committee Act applicable

Advisory committees established or utilized pursuant to this chapter shall be governed in full by the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), except as inconsistent with this section.

(Pub. L. 93-275, § 17, May 7, 1974, 88 Stat. 110.)

REFERENCES IN TEXT

Federal Advisory Committee Act, referred to in subsec. (d), is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 6273; title 50 App. section 2158a.

§ 777. Economic analysis of proposed actions

(a) Scope of analysis

In carrying out the provisions of this chapter, the Administrator shall, to the greatest extent practicable, insure that the potential economic impacts of proposed regulatory and other actions are evaluated and considered, including but not limited to an analysis of the effect of such actions on—

(1) the fiscal integrity of State and local governments;

(2) vital industrial sectors of the economy;

(3) employment, by industrial and trade sectors, as well as on a national, regional, State, and local basis;

(4) the economic vitality of regional, State, and local areas;

(5) the availability and price of consumer goods and services;

(6) the gross national product;

(7) low and middle income families as defined by the Bureau of Labor Statistics;

(8) competition in all sectors of industry; and

(9) small business.

(b) Conservation measures

The Administrator shall develop analyses of the economic impact of various conservation measures on States or significant sectors thereof, considering the impact on both energy for fuel and energy as feed stock for industry.

(c) Explicit analyses; interagency cooperation; other review and cause of action provisions

Such analyses shall, wherever possible, be made explicit, and to the extent possible, other Federal agencies and agencies of State and local governments which have special knowledge and expertise relevant to the impact of proposed regulatory or other actions shall be consulted in making the analyses and all Federal agencies are authorized and directed to cooperate with the Administrator in preparing such analyses: *Provided*, That the Administrator's actions pursuant to this section shall not create any right of review or cause of action except as would otherwise exist under other provisions of law.

(d) Monitoring economic impact of energy actions; report and recommendations to Congress

The Administrator, together with the Secretaries of Labor and Commerce, shall monitor the economic impact of any energy actions taken by the Administrator, and shall provide the Congress with an annual report on the impact of the energy shortage and the Administrator's actions on employment and the economy. Such report shall contain recommendations as to whether additional Federal programs of employment and economic assistance should be put into effect to minimize the impact of the energy shortage and any actions taken.

(e) Industrial or regional discrimination; equal bearing of costs and burdens of meeting energy shortages

The Administrator shall formulate and implement regulatory and other actions in a manner (1) which does not unduly discriminate against any industry or any region of the United States; and (2) designed to insure that, to the greatest extent possible, the costs and burdens of meeting energy shortages shall be borne equally by every sector and segment of the country and of the economy.

(Pub. L. 93-275, § 18, May 7, 1974, 88 Stat. 110; Pub. L. 94-385, title I, § 109(d), Aug. 14, 1976, 90 Stat. 1130.)

AMENDMENTS

1976—Subsec. (d). Pub. L. 94-385 substituted "an annual report" for "a report every six months."

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 778. Management oversight review; report to Administrator

The Administrator may, for a period not to exceed thirty days in any one calendar year, provide for the exercise or performance of a management oversight review with respect to the conduct of any Federal or State (with consent of the Governor) energy program conducted pursuant to this chapter. Such review may be conducted by contract or by any Federal department or agency. A written report shall be submitted to the Administrator concerning the findings of the review.

(Pub. L. 93-275, § 19, May 7, 1974, 88 Stat. 111.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 779. Coordination with, and technical assistance to, State governments

(a) Report to Congress and State governments: organization of Administration; report to the public, Congress and State governments; scope of nontechnical report; comments of State governments respecting rules, regulations, or policies and programs; energy shortages, status reports; information clearing house

The Administrator shall—

(1) coordinate Federal energy programs and policies with such programs and policies of State governments by providing—

(A) within sixty days of the effective date of this chapter, the Congress and State governments with a report on the manner in which he has organized the Administration based upon the functions delegated by the President or assigned to the Administrator by this chapter or under the authority of other Acts; and

(B) within one hundred and twenty days of the effective date of this chapter, the public, State governments, and all Members of the Congress with a report in nontechnical language which—

(i) describes the functions performed by the Administration;

(ii) sets forth in detail the organization of the Administration, the location of its offices (including regional, State, and local offices), the names and phone numbers of Administration officials, and other appropriate information concerning the operation of the Administration;

(iii) delineates the role that State, and Federal governments will or may perform in achieving the purposes of this chapter; and

(iv) provides the public with a clear understanding of their duties and obligations, rights, and responsibilities under any of the programs or functions of the Administration;

(2) before promulgating any rules, regulations, or policies, and before establishing any programs under the authority of this chapter, provide, where practicable, a reasonable period in which State governments may provide written comments if such rules, regulations, policies, or programs substantially affect the authority or responsibility of such State governments;

(3) provide, in accordance with the provisions of this chapter, upon request, to State governments all relevant information he possesses concerning the status and impact of energy shortages, the extent and location of available supplies and shortages of crude oil, petroleum products, natural gas, and coal, within the distribution area serving that particular State government; and

(4) provide for a central clearinghouse for Federal agencies and State governments seeking energy information and assistance from the Federal Government.

(b) Technical assistance; task forces; conferences: expenses of participation; model legislation; uniform criteria, procedures, and forms for grant or contract applications for State government energy proposals

Pursuant to his responsibility under this section, the Administrator shall—

(1) provide technical assistance—including advice and consultation relating to State programs, and, where necessary, the use of task forces of public officials and private persons assigned to work with State governments—to assist State governments in dealing with energy problems and shortages and their impact and in the development of plans, programs, and policies to meet the problems and shortages so identified;

(2) convene conferences of State and Federal officials, and such other persons as the Administrator designates, to promote the purposes of this chapter, and the Administrator is authorized to pay reasonable expenses incurred in the participation of individuals in such conferences;

(3) draft and make available to State governments model legislation with respect to State energy programs and policies; and

(4) promote the promulgation of uniform criteria, procedures, and forms for grant or contract applications for energy proposals submitted by State governments.

(Pub. L. 93-275, § 20, May 7, 1974, 88 Stat. 111.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 780. Office of Private Grievances and Redress

(a) Establishment; director; statement of purpose

The Administrator shall establish and maintain an Office of Private Grievances and Redress, headed by a director, to receive and evaluate petitions filed in accordance with subsection (b) of this section, and to make recommendations to the Administrator for appropriate action.

(b) Petition for special redress, relief, or other extraordinary assistance; nature of remedy

Any person, adversely affected by any order, rule, or regulation issued by the Administrator in carrying out the functions assigned to him under this chapter, may petition the Administrator for special redress, relief, or other extraordinary assistance, apart from, or in addition to, any right or privilege to seek redress of grievances provided in section 766 of this title.

(c) Report and recommendations to Congress

The Administrator shall report quarterly to the Congress on the nature and number of the grievances which have been filed, and the action taken and relief provided, pursuant to this section; and he shall make recommendations to the Congress from time to time concerning legislative or administrative actions which may be taken to better assist persons adversely affected by the energy shortages and to distribute more equitably the burdens resulting from any measures adopted, or actions taken, by him.

(Pub. L. 93-275, § 21, May 7, 1974, 88 Stat. 112.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 781. Comprehensive energy plan

(a) Report to President and Congress; analytical justification; scope of analysis

Pursuant and subject to the provisions and procedures set forth in this chapter, the Administrator shall, within six months from May 7, 1974, develop and report to the Congress and the President a comprehensive plan designed to alleviate the energy shortage, for the time period covered by this chapter. Such plan shall be accompanied by full analytical justification for the actions proposed therein. Such analysis shall include, but not be limited to—

(1) estimates of the energy savings of each action and of the program as a whole;

(2) estimates of any windfall losses and gains to be experienced by corporations, industries, and citizens grouped by socioeconomic class;

(3) estimates of the impact on supplies and consumption of energy forms consequent to such price changes as are or may be proposed; and

(4) a description of alternative actions which the Administrator has considered together with a rationale in explanation of the

rejection of any such alternatives in preference to the measures actually proposed.

(b) Alterations; analytical justifications

The Administrator may, from time to time, modify or otherwise alter any such plan, except that, upon request of an appropriate committee of the Congress, the Administrator shall supply analytical justifications for any such alterations.

(c) Monitoring activity

The Administrator shall be responsible for monitoring any such plans as are implemented with respect to their effectiveness in achieving the anticipated benefits.

(Pub. L. 93-275, § 22, May 7, 1974, 88 Stat. 113.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 782. Petrochemical report to Congress

(a) Scope of report

Within ninety days after he has entered upon the office of Administrator or has been designated by the President to act in such office, the Administrator, or acting Administrator, as the case may be, with the assistance of the Department of Commerce, the Cost of Living Council, and the United States International Trade Commission shall, by written report, inform the Congress as to the—

(1) effect of current petrochemical prices upon the current level of petrochemical exports, and export levels expected for 1975;

(2) effect of current and expected 1975 petrochemical export levels upon domestic petrochemical raw materials and products available to petrochemical producers, converters, and fabricators currently and in 1975;

(3) current contribution of petrochemical imports to domestic supplies and the expected contributions in 1975;

(4) anticipated economic effects of current and expected 1975 levels of domestic supplies of petrochemicals upon domestic producers, converters, and fabricators of petrochemical raw materials and products; and

(5) exact nature, extent, and sources of data and other information available to the Federal Government regarding the matters set forth in paragraphs (1) through (4) of this subsection, including the exact nature, extent, and sources of such data and information utilized in connection with the report required by this subsection.

(b) Definition of "petrochemical"

As used in this section, the term "petrochemical" includes organic chemicals, cyclic intermediates, plastics and resins, synthetic fibers, elastomers, organic dyes, organic pigments, detergents, surface active agents, carbon black and ammonia.

(Pub. L. 93-275, § 23, May 7, 1974, 88 Stat. 113; Pub. L. 93-618, title I, § 171, Jan. 3, 1975, 88 Stat. 2009.)

CHANGE OF NAME

The United States Tariff Commission was renamed the United States International Trade Commission by section 171 of Pub. L. 93-618, which is classified to section 2331 of Title 19, Customs Duties.

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

COST OF LIVING COUNCIL

The Cost of Living Council was abolished July 1, 1974, by Ex. Ord. No. 11788, § 1, June 18, 1974, 39 FR 22113, set out as a note under section 1904 of Title 12, Banks and Banking.

§ 783. Hydroelectric generating facilities; lists, transmittal to Congress; construction schedule and cost estimates for expedited construction program; prospective accomplishments from expedited completion of facilities; statement of appropriated but not obligated funds

Within ninety days of the effective date of this chapter, the Administrator of the Federal Energy Administration, in consultation with the Secretary of the Interior and the Secretary of the Army, shall—

(1) transmit to the Congress—

(A) a list of hydroelectric generating facilities and electric power transmission facilities which have been authorized for construction by the Congress and which are not yet completed, and

(B) a list of opportunities to increase the capacity of existing hydroelectric generating facilities, and

(2) provide, for each such facility which is listed—

(A) a construction schedule and cost estimates for an expedited construction program which would make the facility available for service at the earliest practicable date, and

(B) a statement of the accomplishments which could be provided by the expedited completion of each facility and a statement of any funds which have been appropriated but not yet obligated.

(Pub. L. 93-275, § 24, May 7, 1974, 88 Stat. 114.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 784. Exports of coal and refined petroleum products

(a) File concerning export transactions, sales, exchanges or shipments: establishment and maintenance; scope of information

The Administrator is authorized and directed to establish and maintain a file which shall contain information concerning every transaction, sale, exchange or shipment involving the export from the United States to a foreign nation of coal, crude oil, residual oil or any refined petroleum product. Information to be included in the file shall be current and shall include, but shall not be limited to, the name of the exporter (including the name or names of the holders of any beneficial interests), the volume and type of product involved in the export transaction, the manner of shipment and identification of the vessel or carrier, the destination, the name of the purchaser if a sale, exchange or other transaction is involved, and a statement of reasons justifying the export.

(b) Information and report to committee of Congress or head of Federal agency from Administrator; exception: disclosure detrimental to national security

Upon request of any committee of Congress or the head of any Federal agency, the Administrator shall promptly provide any information maintained in the file and a report thereon to such committee, or agency head, except where the President finds such disclosure to be detrimental to national security.

(c) Information to Administrator from Federal agency

Notwithstanding any other provision of law, any Federal agency which collects or has information relevant to the functions required by this section shall make such information available to the Administrator.

(d) Collection of independent information

The Administrator shall not be required to collect independently information described in subsection (a) of this section if he can secure the information described in subsection (a) of this section from other Federal agencies and the information secured from such agencies is available to the Congress pursuant to a request under subsection (b) of this section.

(Pub. L. 93-275, § 25, May 7, 1974, 88 Stat. 114; Pub. L. 94-385, title I, § 111, Aug. 14, 1976, 90 Stat. 1132.)

AMENDMENTS

1976—Subsec. (d). Pub. L. 94-385 added subsec. (d).

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 785. Foreign ownership; comprehensive review; sources of information; report to Congress; monitoring activity

The Administrator shall conduct a comprehensive review of foreign ownership of, influence on, and control of domestic energy sources and supplies. Such review shall draw upon existing information, where available, and any independent investigation necessary by the Administration. The Administrator shall, on or before the expiration of the one hundred and eighty day period following the effective date of this chapter, report to the Congress in sufficient detail so as to apprise the Congress as to the extent and forms of such foreign ownership of, influence on, and control of domestic energy sources and supplies, and shall thereafter continue to monitor such ownership, influence and control.

(Pub. L. 93-275, § 26, May 7, 1974, 88 Stat. 115.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 786. Reversion

Upon the termination of this chapter, any functions or personnel transferred by this chapter shall revert to the department, agency, or office from which they were transferred. An officer or employee of the Federal Government who is appointed, without break in service of one or more workdays, to any position for carrying out functions under this chapter is entitled, upon separation from such position other than for cause, to reemployment in the position occupied at the time of appointment, or in a position of comparable grade and salary.

(Pub. L. 93-275, § 28, May 7, 1974, 88 Stat. 115.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 787. Project Independence evaluation system documentation; access to model by Congress and public

The Administrator of the Federal Energy Administration shall—

(1) submit to the Congress, not later than September 1, 1976, full and complete structural and parametric documentation, and not later than January 1, 1977, operating documentation, of the Project Independence Evaluation System computer model;

(2) provide access to such model to representatives of committees of the Congress in an expeditious manner; and

(3) permit the use of such model on the computer system maintained by the Federal Energy Administration by any member of the public upon such reasonable terms and conditions as the Administrator shall, by rule, prescribe. Such rules shall provide that any member of the public who uses such model may be charged a fair and reasonable fee, as determined by the Administrator, for using such model.

(Pub. L. 93-275, § 31, as added Pub. L. 94-385, title I, § 113, Aug. 14, 1976, 90 Stat. 1132.)

EFFECTIVE AND TERMINATION DATES

Section effective sixty days after May 7, 1974, or sooner under Presidential notice published in Federal Register, and terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

SUBCHAPTER II—OFFICE OF ENERGY INFORMATION AND ANALYSIS

§ 790. Establishment of Office of Energy Information and Analysis

(a) Director; appointment; qualifications

(1) There is established within the Federal Energy Administration an Office of Energy Information and Analysis (hereinafter in this

chapter referred to as the "Office") which shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Director shall be a person who, by reason of professional background and experience, is specially qualified to manage an energy information system.

(b) Delegation of authority by Administrator

The Administrator shall delegate (which delegation may be on a nonexclusive basis as the Administrator may determine may be necessary to assure the faithful execution of his authorities and responsibilities under law) the authority vested in him under section 796 of this title and section 772 of this title and the Director may act in the name of the Administrator under section 797 of this title and section 772 of this title for the purpose of obtaining enforcement of the authorities delegated to him.

(c) Definition

As used in this chapter the term "energy information" shall have the meaning described in section 796 of this title.

(Pub. L. 93-275, § 51, as added Pub. L. 94-385, title I, § 142, Aug. 14, 1976, 90 Stat. 1135.)

EFFECTIVE AND TERMINATION DATES

Section 143 of Pub. L. 94-385 provided that: "The amendments made by this part C to the Federal Energy Administration Act of 1974 [enacting this subchapter] shall take effect 150 days after the date of enactment of this Act [Aug. 14, 1976], except that section 56(c) of the Federal Energy Administration Act of 1974 (as added by this part) [section 790e(c) of this title] shall take effect on the date of enactment of this Act [Aug. 14, 1976]."

Section terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

CONGRESSIONAL FINDINGS AND PURPOSE

Section 141 of Pub. L. 94-385 provided that:

"(a) The Congress finds that the public interest requires that decisionmaking, with respect to this Nation's energy requirements and the sufficiency and availability of energy resources and supplies, be based on adequate, accurate, comparable, coordinated, and credible energy information.

"(b) The purpose of this title [see Short Title note under section 761 of this title] is to establish within the Federal Energy Administration an Office of Energy Information and Analysis and a National Energy Information System to assure the availability of adequate, comparable, accurate, and credible energy information to the Federal Energy Administration, to other Government agencies responsible for energy-related policy decisions, to the Congress, and to the public."

§ 790a. National Energy Information System; information required to be maintained

(a) It shall be the duty of the Director to establish a National Energy Information System (hereinafter referred to in this chapter as the "System"), which shall be operated and maintained by the Office. The System shall contain such information as is required to provide a description of and facilitate analysis of energy supply and consumption within and affecting the United States on the basis of such geographic areas and economic sectors as may be appropriate to meet adequately the needs of—

(1) the Federal Energy Administration in carrying out its lawful functions;

(2) the Congress; and

(3) other officers and employees of the United States in whom have been vested, or to whom have been delegated, energy-related policy decisionmaking responsibilities.

(b) At a minimum, the System shall contain such energy information as is necessary to carry out the Administration's statistical and forecasting activities, and shall include, at the earliest date and to the maximum extent practical subject to the resources available and the Director's ordering of those resources to meet the responsibilities of his Office, such energy information as is required to define and permit analysis of—

(1) the institutional structure of the energy supply system including patterns of ownership and control of mineral fuel and nonmineral energy resources and the production, distribution, and marketing of mineral fuels and electricity;

(2) the consumption of mineral fuels, nonmineral energy resources, and electricity by such classes, sectors, and regions as may be appropriate for the purposes of this chapter;

(3) the sensitivity of energy resource reserves, exploration, development, production, transportation, and consumption to economic factors, environmental constraints, technological improvements, and substitutability of alternate energy sources;

(4) the comparability of energy information and statistics that are supplied by different sources;

(5) industrial, labor, and regional impacts of changes in patterns of energy supply and consumption;

(6) international aspects, economic and otherwise, of the evolving energy situation; and

(7) long-term relationships between energy supply and consumption in the United States and world communities.

(Pub. L. 93-275, § 52, as added Pub. L. 94-385, title I, § 142, Aug. 14, 1976, 90 Stat. 1135.)

EFFECTIVE AND TERMINATION DATES

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94-385, set out as a note under section 790 of this title.

Section terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 790c of this title.

§ 790b. Administrative provisions

(a) Compensation of Director

The Director of the Office shall receive compensation at the rate now or hereafter prescribed for offices and positions at level IV of the Executive Schedule as specified in section 5315 of title 5.

(b) Authorization of Director to appoint and fix compensation of employees

To carry out the functions of the Office, the Director, on behalf of the Administrator, is authorized to appoint and fix the compensation of such professionally qualified employees as he deems necessary, including up to ten of the employees in grade GS-16, GS-17, or GS-18 authorized by section 766 of this title.

(c) Delegation of functions by the Director

The functions and powers of the Office shall be vested in or delegated to the Director, who may from time to time, and to the extent permitted by law, consistent with the purposes of this chapter, delegate such of his functions as he deems appropriate. Such delegation may be made, upon request, to any officer or agency of the Federal Government.

(d) Access to Director by Congress; requests for appropriations

(1) The Director shall be available to the Congress to provide testimony on such subjects under his authority and responsibility as the Congress may request, including but not limited to energy information and analyses thereof.

(2) Any request for appropriations for the Federal Energy Administration submitted to the Congress shall identify the portion of such request intended for the support of the Office, and a statement of the differences, if any, between the amounts requested and the Director's assessment of the budgetary needs of the Office.

(Pub. L. 93-275, § 53, as added Pub. L. 94-385, title I, § 142, Aug. 14, 1976, 90 Stat. 1136.)

REFERENCES IN TEXT

Grades GS-16, 17, and 18, referred to in subsec. (b), are contained in the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

EFFECTIVE AND TERMINATION DATES

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94-385, set out as a note under section 790 of this title.

Section terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 790c. Analysis and evaluation of energy information; establishment and maintenance by Director of professional, etc., capability; specific capabilities

(a) The Director shall establish and maintain the scientific, engineering, statistical, or other technical capability to perform analysis of energy information to—

(1) verify the accuracy of items of energy information submitted to the Director; and

(2) insure the coordination and comparability of the energy information in possession of the Office and other Federal agencies.

(b) The Director shall establish and maintain the professional and analytic capability to evaluate independently the adequacy and comprehensiveness of the energy information in possession of the Office and other agencies of the Federal Government in relation to the purposes of this chapter and for the performance of the analyses described in section 790a of this title. Such analytic capability shall include—

(1) expertise in economics, finance, and accounting;

(2) the capability to evaluate estimates of reserves of mineral fuels and nonmineral energy resources utilizing alternative methodologies;

(3) the development and evaluation of energy flow and accounting models describing the production, distribution, and consumption of energy by the various sectors of the economy and lines of commerce in the energy industry;

(4) the development and evaluation of alternative forecasting models describing the short- and long-term relationships between energy supply and consumption and appropriate variables; and

(5) such other capabilities as the Director deems necessary to achieve the purposes of this chapter.

(Pub. L. 93-275, § 54, as added Pub. L. 94-385, title I, § 142, Aug. 14, 1976, 90 Stat. 1137.)

EFFECTIVE AND TERMINATION DATES

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94-385, set out as a note under section 790 of this title.

Section terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 790d. Annual performance audit review of procedures and methodology by Professional Audit Review Team

(a) Authorization for review and report by Team

The procedures and methodology of the Office shall be subject to a thorough annual performance audit review. Such review shall be conducted by a Professional Audit Review Team which shall prepare a report describing its investigation and reporting its findings to the President and to the Congress.

(b) Membership, appointment and Chairman of Team

The Professional Audit Review Team shall consist of at least seven professionally qualified persons who shall be officers or employees of the United States and of whom at least—

one shall be designated by the Chairman of the Council of Economic Advisers;

one shall be designated by the Commissioner of Labor Statistics;

one shall be designated by the Administrator of Social and Economic Statistics;

one shall be designated by the Chairman of the Securities and Exchange Commission;

one shall be designated by the Chairman of the Federal Trade Commission;

one shall be designated by the Chairman of the Federal Power Commission; and

one, who shall be the Chairman of the Professional Audit Review Team, shall be designated by the Comptroller General.

(c) Cooperation of Director and Administrator with Team

The Director and the Administrator shall cooperate fully with the Professional Audit Review Team and notwithstanding any other provisions of law shall make available to the Team such data, information, documents, and services as the Team determines are necessary for successful completion of its performance audit review.

(d) Disclosures of trade secrets or confidential commercial information by members of Team; penalties

Except as authorized by law, any person who—

(1) obtains, in the course of exercising the functions of the Professional Audit Review Team, information which constitutes a trade secret or confidential commercial information, the disclosure of which could result in significant competitive injury to the person to which such information relates; and

(2) willfully discloses such information;

shall be fined not more than $40,000, or imprisoned not more than one year, or both.

(Pub. L. 93-275, § 55, as added Pub. L. 94-385, title I, § 142, Aug. 14, 1976, 90 Stat. 1137.)

EFFECTIVE AND TERMINATION DATES

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94-385, set out as a note under section 790 of this title.

Section terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 790e. Coordination by Director of energy information gathering activities of Federal agencies

(a) Review

In carrying out the purposes of this chapter the Director shall, as he deems appropriate, review the energy information gathering activities of Federal agencies with a view toward avoiding duplication of effort and minimizing the compliance burden on business enterprises and other persons.

(b) Policy recommendations

In exercising his responsibilities under subsection (a) of this section, the Director shall recommend policies which, to the greatest extent practicable—

(1) provide adequately for the energy information needs of the various departments and agencies of the Federal Government, the Congress, and the public;

(2) minimize the burden of reporting energy information on businesses, other persons, and especially small businesses;

(3) reduce the cost to Government of obtaining information; and

(4) utilize files of information and existing facilities of established Federal agencies.

(c) Report to Administrator by other Federal agencies involved in collection of energy information; cooperation of other Federal agencies; report by Administrator to President, Congress, and Energy Resources Council

(1) At the earliest practicable date after August 14, 1976, each Federal agency which is engaged in the gathering of energy information as a part of an established program, function, or other activity shall promptly provide the Administrator with a report on energy information which—

(A) identifies the statutory authority upon which the energy information collection activities of such agency is based;

(B) lists and describes the energy information needs and requirements of such agency; and

(C) lists and describes the categories, definitions, levels of detail, and frequency of collection of the energy information collected by such agency.

Such agencies shall cooperate with the Administrator and provide such other descriptive information with respect to energy information activities as the Administrator may request. The Administrator shall prepare a report on his activities under this subsection, which report shall include recommendations with respect to the coordination of energy information activities of the Federal Government. Such report shall be available to the Congress and shall be transmitted to the President and to the Energy Resources Council for use in preparation of the plan required under subsection (c) of section 5818 of title 42.

(Pub. L. 93-275, § 56, as added Pub. L. 94-385, title I, § 142, Aug. 14, 1976, 90 Stat. 1138.)

EFFECTIVE AND TERMINATION DATES

Section effective 150 days after Aug. 14, 1976, except that subsec. (c) of this section effective Aug. 14, 1976, see section 143 of Pub. L. 94-385, set out as a note under section 790 of this title.

Section terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 790f. Reports by Director

(a) Periodic and special reports by Director to Congress and public; contents

The Director shall make periodic reports and may make special reports to the Congress and the public, including but not limited to—

(1) such reports as the Director determines are necessary to provide a comprehensive picture of the quarterly, monthly, and, as appropriate, weekly supply and consumption of the various nonmineral energy resources, mineral fuels, and electricity in the United States; the information reported may be organized by company, by States, by regions, or by such other producing and consuming sectors, or combinations thereof, and shall be accompanied by an appropriate discussion of the evolution of the energy supply and consumption situation and such national and international trends and their effects as the Director may find to be significant; and

(2) an annual report which includes, but is not limited to, a description of the activities of the Office and the National Energy Information System during the preceding year; a summary of all special reports published during the preceding year; a summary of statistical information collected during the preceding year; short-, medium-, and long-term energy consumption and supply trends and forecasts under various assumptions; and, to the maximum extent practicable, a summary or schedule of the amounts of mineral fuel resources, nonmineral energy resources, and mineral fuels that can be brought to market at various prices and technologies and their relationship to forecasted demands.

(b) Duty of Director to insure adequate documentation of forecasts and reports; periodic audit and validation of analytical methodologies; availability of information to public

(1) The Director, on behalf of the Administrator, shall insure that adequate documentation for all statistical and forecast reports prepared by the Director is made available to the public at the time of publication of such reports. The Director shall periodically audit and validate analytical methodologies employed in the preparation of periodic statistical and forecast reports.

(2) The Director shall, on a regular basis, make available to the public information which contains validation and audits of periodic statistical and forecast reports.

(c) Approval prior to publication of forecasts and reports

Prior to publication, the Director may not be required to obtain the approval of any other officer or employee of the United States with respect to the substance of any statistical or forecasting technical reports which he has prepared in accordance with law.

(Pub. L. 93-275, § 57, as added Pub. L. 94-385, title I, § 142, Aug. 14, 1976, 90 Stat. 1139.)

EFFECTIVE AND TERMINATION DATES

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94-385, set out as a note under section 790 of this title.

Section terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 790g. Access by Director to energy information in possession of other Federal agencies; limitations; authority to obtain information from original or alternate sources

(a) In furtherance and not in limitation of any other authority, the Director, on behalf of the Administrator, shall have access to energy information in the possession of any Federal agency except information—

(1) the disclosure of which to another Federal agency is expressly prohibited by law; or

(2) the disclosure of which the agency so requested determines would significantly impair the discharge of authorities and responsibilities which have been delegated to, or vested by law, in such agency.

(b) In the event that energy information in the possession of another Federal agency which is required to achieve the purposes of this chapter is denied the Director or the Administrator pursuant to paragraph (1) or paragraph (2) of subsection (a) of this section, the Administrator, or the Director, on behalf of the Administrator, shall take appropriate action, pursuant to authority granted by law, to obtain said information from the original sources or a suitable alternate source. Such source shall be notified of the reason for this request for information.

(Pub. L. 93-275, § 58, as added Pub. L. 94-385, title I, § 142, Aug. 14, 1976, 90 Stat. 1139.)

EFFECTIVE AND TERMINATION DATES

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94-385, set out as a note under section 790 of this title.

Section terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

§ 790h. Congressional access to energy information; disclosure by Congress

The Director shall promptly provide upon request any energy information in the possession of the Office to any duly established committee of the Congress. Such information shall be deemed the property of such committee and may not be disclosed except in accordance with the rules of such committee and the Rules of the House of Representatives or the Senate and as permitted by law.

(Pub. L. 93-275, § 59, as added Pub. L. 94-385, title I, § 142, Aug. 14, 1976, 90 Stat. 1140.)

EFFECTIVE AND TERMINATION DATES

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94-385, set out as a note under section 790 of this title.

Section terminating Dec. 31, 1977, see section 30 of Pub. L. 93-275, as amended, set out as a note under section 761 of this title.

CHAPTER 16C—ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION

Sec.

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797. Enforcement.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 sections 1857c-5, 1857c-10, 6274.

§ 791. Congressional declaration of purpose

The purposes of this chapter are (1) to provide for a means to assist in meeting the essential needs of the United States for fuels, in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment, and (2) to provide requirements for reports respecting energy resources.

(Pub. L. 93-319, § 1(b), June 22, 1974, 88 Stat. 246.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93-319 which, in addition to enacting this chapter and provision set out as a note under this section, enacted sections 1857c-10 and 1857f-6f of Title 42, The Public Health and Welfare, and amended sections 1857b-1, 1857c-5, 1857c-8, 1857c-9, 1857d-1, 1857f-1, 1857f-6e, 1857f-7, 1857h-5, and 1857*l* of title 42.

SHORT TITLE

Section 1(a) of Pub. L. 93-319 provided that Pub. L. 93-319 [which, in addition to enacting this chapter, enacted sections 1857c-10 and 1857f-6f of Title 42, The Public Health and Welfare, and amended sections 1857b-1, 1857c-5, 1857c-8, 1857c-9, 1857d-1, 1857f-1, 1857f-6e, 1857f-7, 1857h-5, and 1857*l* of Title 42] may be cited as the "Energy Supply and Environmental Coordination Act of 1974".

§ 792. Coal conversion and allocation

(a) Powerplant and fuel burning installations

The Federal Energy Administrator—

(1) shall, by order, prohibit any powerplant, and

(2) may, by order, prohibit any major fuel burning installation, other than a powerplant,

from burning natural gas or petroleum products as its primary energy source, if the requirements of subsection (b) of this section are met and if (A) the Federal Energy Administrator determines such powerplant or installation on June 22, 1974, had, or thereafter acquires or is designed with, the capability and necessary plant equipment to burn coal, or (B) such powerplant or installation is required to meet a design or construction requirement under subsection (c) of this section.

(b) Prerequisites to issuance or effectiveness of orders prohibiting use of natural gas or petroleum products as primary energy source

The requirements referred to in subsection (a) of this section are as follows:

(1) An order under subsection (a) of this section may not be issued with respect to a powerplant or installation unless the Federal Energy Administrator finds (A) that the burning of coal by such plant or installation, in lieu of petroleum products or natural gas, is practicable and consistent with the purposes of this chapter, (B) that coal and coal transportation facilities will be available during the period the order is in effect, and (C) in the case of a powerplant, that the prohibition under subsection (a) of this section will not impair the reliability of service in the area served by such plant. Such an order shall be rescinded or modified to the extent the Federal Energy Administrator determines that any requirement described in subparagraph (A), (B), or (C) of this paragraph is no longer met; and such an order may at any time be modified if the Federal Energy Administrator determines that such order, as modified, complies with the requirements of this section.

(2)(A) Before issuing an order under subsection (a) of this section which is applicable to a powerplant or installation for a period ending on or before June 30, 1975, the Federal Energy Administrator (i) shall give notice to the public and afford interested persons an opportunity for written presentations of data, views, and arguments, (ii) shall consult with the Administrator of the Environmental Protection Agency, and (iii) shall take into account the likelihood that the powerplant or installation will be permitted to burn coal after June 30, 1975.

(B) An order described in subparagraph (A) of this paragraph shall not become effective until the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 1857c-10(d)(1)(A) of title 42 is the earliest date that such plant or installation will be able to comply with the air pollution requirements which will be applicable to it. Such order shall not be effective for any period certified by the Administrator of the Environmental Protection Agency pursuant to section 1857c-10(d)(3)(B) of title 42.

(3)(A) Before issuing an order under subsection (a) of this section which is applicable to a powerplant or installation after June 30, 1975 (or modifying an order to which paragraph (2) applies, so as to apply such order to a powerplant or installation after such date), the Federal Energy Administrator shall give notice to the public and afford interested persons an opportunity for oral and written presentations of data, views, and arguments.

(B) An order (or modification thereof) described in subparagraph (A) of this paragraph shall not become effective until (i) the Administrator of the Environmental Protection Agency notifies the Federal Energy Administrator under section 1857c-10(d)(1)(B) of title 42 that such plant or installation will be able on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a compliance date extension under section 1857c-10(c) of title 42, or (ii) if such notification is not given, the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 1857c-10(d)(1)(B) of title 42 is the earliest date that such plant or installation will be able to comply with all applicable requirements of such 1857c-10 of title 42. Such order (or modification) shall not be effective during any period certified by the Administrator of the Environmental Protection Agency under section 1857c-10(d)(3)(B) of title 42.

(c) Construction and design of powerplants or other major fuel burning installations

The Federal Energy Administrator may require that any powerplant or other major fuel burning installation in the early planning process (other than a combustion gas turbine or combined cycle unit) be designed and constructed so as to be capable of using coal as its primary energy source. No powerplant or other major fuel burning installation may be required under this subsection to be so designed and constructed, if the Administrator determines that (1) in the case of a powerplant to do so is likely to result in an impairment of reliability or adequacy of service, or (2) an adequate and reliable supply of coal is not expected to be available. In considering whether to impose a design and construction requirement under this subsection, the Federal Energy Administrator shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner to recover any capital investment made as a result of any requirement imposed under this subsection.

(d) Allocation of coal

The Federal Energy Administrator may, by rule or order, allocate coal (1) to any powerplant or major fuel-burning installation to which an order under subsection (a) of this section has been issued, or (2) to any other person to the extent necessary to carry out the purposes of this chapter.

(e) Definitions

For purposes of this section:

(1) The term "powerplant" means a fossil-fuel fired electric generating unit which produces electric power for purposes of sale or exchange.

(2) The term "coal" includes coal derivatives.

(f) Expiration of authority; effective dates

(1) Authority to issue orders or rules under subsections (a) through (d) of this section shall expire at midnight, June 30, 1977. Such a rule or order may take effect at any time before January 1, 1985.

(2) Authority to amend, repeal, rescind, modify, or enforce such rules or orders shall expire at midnight, December 31, 1984; but the expiration of such authority shall not affect any administrative or judicial proceeding which relates to any act or omission which occurred prior to January 1, 1985.

(Pub. L. 93-319, § 2, June 22, 1974, 88 Stat. 246; Pub. L. 94-163, title I, § 101, Dec. 22, 1975, 89 Stat. 875.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b)(1) and (d), was in the original "this Act", meaning Pub. L. 93-319. For complete classification of this Act to the Code, see Short Title note set out under section 791 of this title.

AMENDMENTS

1975—Subsec. (a). Pub. L. 94-163, § 101(b) authorized the Administrator to prohibit any powerplant or other fuel burning installation from burning natural gas or petroleum products as its primary energy source if such powerplant or other installation is required to meet a design or construction requirement under subsec. (c) of this section.

Subsec. (c). Pub. L. 94-163, § 101(c), inserted "or other major fuel burning installation" after "powerplant" wherever it appears and inserted "in the case of a powerplant" after "if the Administrator determines that (1)".

Subsec. (f)(1). Pub. L. 94-163, § 101(a)(1), substituted "June 30, 1977" for "June 30, 1975" and "January 1, 1985" for "January 1, 1979".

Subsec. (f)(2). Pub. L. 94-163, § 101(a)(2), substituted "December 31, 1984" for "December 31, 1978" and "January 1, 1985" for "January 1, 1979".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 793, 797 of this title; title 42 section 1857c-10.

§ 793. Protection of public health and environment

(a) Distribution of low sulfur fuel

Any allocation program provided for in section 792 of this title or in the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.], shall, to the maximum extent practicable, include measures to assure that available low sulfur fuel will be distributed on a priority basis to those areas of the United States designated by the Administrator of the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impact on public health.

(b) Study of chronic effects of sulfur oxide emissions among exposed populations

In order to determine the health effects of emissions of sulfur oxides to the air resulting from any conversions to burning coal to which section 119 of the Clean Air Act [42 U.S.C. 1857c-10] applies, the Department of Health, Education, and Welfare shall, through the National Institute of Environmental Health Sciences and in cooperation with the Environmental Protection Agency, conduct a study of chronic effects among exposed populations. The sum of $3,500,000 is authorized to be appropriated for such a study. In order to assure that long-term studies can be conducted without interruption, such sums as are appropriated shall be available until expended.

(c) Major Federal actions significantly affecting the quality of the human environment

(1) No action taken under the Clean Air Act [42 U.S.C. 1857 et seq.] shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

(2) No action under section 792 of this title for a period of one year after initiation of such action shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.]. However, before any action under section 792 of this title that has a significant impact on the environment is taken, if practicable, or in any event within sixty days after such action is taken, an environmental evaluation with analysis equivalent to that required under section 102(2)(C) of the National Environmental Policy Act [42 U.S.C. 4332(2)(C)], to the greatest extent practicable within this time constraint, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public for a thirty-day comment period after which a public hearing shall be held upon request to review outstanding environmental issues. Such an evaluation shall not be required where the action in question has been preceded by compliance with the

National Environmental Policy Act by the appropriate Federal agency. Any action taken under section 792 of this title which will be in effect for more than a one-year period or any action to extend an action taken under section 792 of this title to a total period of more than one year shall be subject to the full provisions of the National Environmental Policy Act, notwithstanding any other provision of this chapter.

(d) Importation of hydroelectric energy

In order to expedite the prompt construction of facilities for the importation of hydroelectric energy thereby helping to reduce the shortage of petroleum products in the United States, the Federal Power Commission is hereby authorized and directed to issue a Presidential permit pursuant to Executive Order 10485 of September 3, 1953, for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States without preparing an environmental impact statement pursuant to section 102 of the National Environmental Policy Act of 1969 [42 U.S.C. 4332] for facilities for the transmission of electric energy between Canada and the United States in the vicinity of Fort Covington, New York.

(Pub. L. 93-319, § 7, June 22, 1974, 88 Stat. 259.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, which is classified generally to chapter 16A (§ 751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 751 of this title and Tables volume.

The Clean Air Act, referred to in subsec. (c), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, which is classified generally to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1857 of Title 42 and Tables volume.

The National Environmental Policy Act of 1969, referred to in subsec. (c), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note under section 4321 of Title 42 and Tables volume.

This chapter, referred to in subsec. (c)(2), was in the original "this Act", meaning Pub. L. 93-319. For complete classification of this Act to the Code, see Short Title note set out under section 791 of this title.

Executive Order 10485 of September 3, 1953, referred to in subsec. (d), is Exec. Ord. No. 10485, Sept. 3, 1953, 18 F.R. 5397, and is set out as a note under section 717b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 795 of this title.

§ 794. Energy conservation study

(a) The Federal Energy Administrator shall conduct a study on potential methods of energy conservation and, not later than six months after June 22, 1974, shall submit to Congress a report on the results of such study. The study shall include, but not be limited to, the following:

(1) the energy conservation potential of restricting exports of fuels or energy-intensive products, or goods, including an analysis of balance-of-payments and foreign relations implications of any such restrictions;

(2) alternative requirements, incentives, or disincentives for increasing industrial recycling and resource recovery in order to reduce energy demand, including the economic costs and fuel consumption tradeoff which may be associated with such recycling and resource recovery in lieu of transportation and use of virgin materials; and

(3) means for incentives or disincentives to increase efficiency of industrial use of energy.

(b) Within ninety days of June 22, 1974, the Secretary of Transportation, after consultation with the Federal Energy Administrator, shall submit to the Congress for appropriate action an "Emergency Mass Transportation Assistance Plan" for the purpose of conserving energy by expanding and improving public mass transportation systems and encouraging increased ridership as alternatives to automobile travel.

(c) Such plan shall include, but shall not be limited to—

(1) recommendations for emergency temporary grants to assist States and local public bodies and agencies thereof in the payment of operating expenses incurred in connection with the provision of expanded mass transportation service in urban areas;

(2) recommendations for additional emergency assistance for the purchase of buses and rolling stock for fixed rail, including the feasibility of accelerating the timetable for such assistance under section 142(a)(2) of title 23 for the purpose of providing additional capacity for and encouraging increased use of public mass transportation systems;

(3) recommendations for a program of demonstration projects to determine the feasibility of fare-free and low-fare urban mass transportation systems, including reduced rates for elderly and handicapped persons during nonpeak hours of transportation;

(4) recommendations for additional emergency assistance for the construction of fringe and transportation corridor parking facilities to serve bus and other mass transportation passengers;

(5) recommendations on the feasibility of providing tax incentives for persons who use public mass transportation systems.

(Pub. L. 93-319, § 8, June 22, 1974, 88 Stat. 260.)

§ 795. Report to Congress by January 31, 1975

The Administrator of the Environmental Protection Agency shall report to Congress not later than January 31, 1975, on the implementation of sections 3 through 7 of the Energy Supply and Environmental Coordination Act of 1974.

(Pub. L. 93-319, § 9, June 22, 1974, 88 Stat. 261.)

REFERENCES IN TEXT

Sections 3 through 7 of the Energy Supply and Environmental Coordination Act of 1974, referred to in text, are sections 3 through 7 of Pub. L. 93-319, June 22, 1974, 88 Stat. 248-260, which sections enacted section 793 of this title and section 1857c-10 of Title 42, The Public Health and Welfare, and amended sections 1857c-5, 1857c-8, 1857c-9, 1857d-1, 1857f-1, and 1857h-5 of Title 42.

§ 796. Reporting of energy information

(a) Authority of Federal Energy Administrator to request, acquire, and collect energy information; rules and regulations

For the purpose of assuring that the Federal Energy Administrator, the Congress, the States, and the public have access to and are able to obtain reliable energy information, the Federal Energy Administrator shall request, acquire, and collect such energy information as he determines to be necessary to assist in the formulation of energy policy or to carry out the purposes of this chapter or the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.]. The Federal Energy Administrator shall promptly promulgate rules pursuant to subsection (b)(1)(A) of this section requiring reports of such information to be submitted to the Federal Energy Administrator at least every ninety calendar days.

(b) Powers of Federal Energy Administrator in obtaining energy information; verification of accuracy; compliance orders

(1) In order to obtain energy information for the purpose of carrying out the provisions of subsection (a) of this section, the Federal Energy Administrator is authorized—

(A) to require, by rule, any person who is engaged in the production, processing, refining, transportation by pipeline, or distribution (at other than the retail level) of energy resources to submit reports;

(B) to sign and issue subpenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(C) to require any person, by general or special order, to submit answers in writing to interrogatories, requests for reports or for other information; and such answers or other submissions shall be made within such reasonable period, and under oath or otherwise, as the Federal Energy Administrator may determine; and

(D) to administer oaths.

(2) For the purpose of verifying the accuracy of any energy information requested, acquired, or collected by the Federal Energy Administrator, the Federal Energy Administrator, or any officer or employer[1] duly designated by him, upon presenting appropriate credentials and a written notice from the Federal Energy Administrator to the owner, operator, or agent in charge, may—

(A) enter, at reasonable times, any business premise or facility; and

(B) inspect, at reasonable times and in a reasonable manner, any such premise or facility, inventory and sample any stock of energy resources therein, and examine and copy books, records, papers, or other documents, relating to any such energy information.

(3) Any United States district court within the jurisdiction of which any inquiry is carried on may, upon petition by the Attorney General at the request of the Federal Energy Administrator, in the case of refusal to obey a subpena or order of the Federal Energy Administrator issued under this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) Development of initial report; quarterly reports; accounting practices

(1) The Federal Energy Administrator shall exercise the authorities granted to him under subsection (b)(1)(A) of this section to develop, within thirty days after June 22, 1974, as full and accurate a measure as is reasonably practicable of—

(A) domestic reserves and production;
(B) imports; and
(C) inventories;

of crude oil, residual fuel oil, refined petroleum products, natural gas, and coal.

(2) For each calendar quarter beginning with the first complete calendar quarter following June 22, 1974, the Federal Energy Administrator shall develop and publish a report containing the following energy information:

(A) Imports of crude oil, residual fuel oil, refined petroleum products (by product), natural gas, and coal, identifying (with respect to each such oil, product, gas, or coal) country of origin, arrival point, quantity received, and the geographic distribution within the United States.

(B) Domestic reserves and production of crude oil, natural gas, and coal.

(C) Refinery activities, showing for each refinery within the United States (i) the amounts of crude oil run by such refinery, (ii) amounts of crude oil allocated to such refinery pursuant to regulations and orders of the Federal Energy Administrator, his delegate pursuant to the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.], or any other person authorized by law to issue regulations and orders with respect to the allocation of crude oil, (iii) percentage of refinery capacity utilized, and (iv) amounts of products refined from such crude oil.

(D) Report of inventories, on a national, regional, and State-by-State basis—

(i) of various refined petroleum products, related refiners, refineries, suppliers to refiners, share of market, and allocation fractions;

(ii) of various refined petroleum products, previous quarter deliveries and anticipated three-month available supplies;

(iii) of anticipated monthly supply of refined petroleum products, amount of set-aside for assignment by the State, anticipated State requirements, excess or shortfall of supply, and allocation fraction of base year; and

(iv) of LPG by State and owner: quantities stored, and existing capacities, and previous priorities on types, inventories of suppliers, and changes in supplier inventories.

(3) In order to carry out his responsibilities under subsection (a) of this section, the Federal Energy Administrator shall require, pursuant to subsection (b)(1)(A) of this section, that persons engaged, in whole or in part, in the production of crude oil or natural gas—

(A) keep energy information in accordance with the accounting practices developed pursuant to section 503 of the Energy Policy and Conservation Act [42 U.S.C. 6383], and

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[1] So in original. Probably should be "employee".

(B) submit reports with respect to energy information kept in accordance with such practices.

The Administrator shall file quarterly reports with the President and the Congress compiled from accounts kept in accordance with such section 503 and submitted to the Administrator in accordance with this paragraph. Such reports shall present energy information in the categories specified in subsection (c) of such section 503 to the extent that such information may be compiled from such accounts. Such energy information shall be collected and such quarterly reports made for each calendar quarter which begins 6 months after the date on which the accounting practices developed pursuant to such section 503 are made effective.

(d) Confidential information

Upon a showing satisfactory to the Federal Energy Administrator by any person that any energy information obtained under this section from such person would, if made public, divulge methods or processes entitled to protection as trade secrets or other proprietary information of such person, such information, or portion thereof, shall be confidential in accordance with the provisions of section 1905 of title 18; except that such information, or part thereof, shall not be deemed confidential for purposes of disclosure, upon request, to (1) any delegate of the Federal Energy Administrator for the purpose of carrying out this chapter and the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.], (2) the Attorney General, the Secretary of the Interior, the Federal Trade Commission, the Federal Power Commission, or the General Accounting Office, when necessary to carry out those agencies' duties and responsibilities under this and other statutes, and (3) the Congress, or any committee of Congress upon request of the Chairman.

(e) Definitions

As used in this section:

(1) The term "energy information" includes (A) all information in whatever form on (i) fuel reserves, exploration, extraction, and energy resources (including petrochemical feedstocks) wherever located; (ii) production, distribution, and consumption of energy and fuels wherever carried on; and (B) matters relating to energy and fuels, such as corporate structure and proprietary relationships, costs, prices, capital investment, and assets, and other matters directly related thereto, wherever they exist.

(2) The term "person" means any natural person, corporation, partnership, association, consortium, or any entity organized for a common business purpose, wherever situated, domiciled, or doing business, who directly or through other persons subject to their control does business in any part of the United States.

(3) The term "United States" when used in the geographical sense means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(f) Availability of energy information

Information obtained by the Administration under authority of this chapter shall be available to the public in accordance with the provisions of section 552 of title 5.

(g) Independent nature of authority to gather energy information; expiration date

(1) The authority contained in this section is in addition to, independent of, not limited by, and not in limitation of, any other authority of the Federal Energy Administrator.

(2) The provisions of this section expire at midnight, December 31, 1979, but such expiration shall not affect any administrative or judicial proceeding which relates to any act or failure to act if such act or failure to act was not in compliance with the requirements and authorities of this section and occurred prior to midnight, December 31, 1979.

(Pub. L. 93-319, § 11, June 22, 1974, 88 Stat. 262; Pub. L. 94-163, title V, §§ 505(a), 506, Dec. 22, 1975, 89 Stat. 960.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 93-319. For complete classification of this Act to the Code, see Short Title note set out under section 791 of this title.

The Emergency Petroleum Allocation Act of 1973, referred to in subsecs. (a), (c)(2)(C), and (d), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, which is classified generally to chapter 16A (§ 751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note under section 751 of this title and Tables volume.

AMENDMENTS

1975—Subsec. (c)(3). Pub. L. 94-163, § 505(a), added subsec. (c)(3).

Subsec. (g)(2). Pub. L. 94-163, § 506, substituted "December 31, 1979" for "June 30, 1975" in two places.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 505(b) of Pub. L. 94-163 provided that: "The amendment made by subsection (a) to section 11(c) of the Energy Supply and Environmental Coordination Act of 1974 [enacting subsec. (c)(3) of this section] shall take effect on the first day of the first accounting quarter to which such practices apply."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 772, 790, 797 of this title; title 42 sections 5917, 6274, 6299, 6346, 6381.

§ 797. Enforcement

(a) It shall be unlawful for any person to violate any provision of section 792 of this title (relating to coal conversion and allocation) or section 796 of this title (relating to energy information) or to violate any rule, regulation, or order issued pursuant to any such provision.

(b)(1) Whoever violates any provision of subsection (a) of this section shall be subject to a civil penalty of not more than $2,500 for each violation.

(2) Whoever willfully violates any provision of subsection (a) of this section shall be fined not more than $5,000 for each violation.

(3) It shall be unlawful for any person to offer for sale or distribute in commerce any coal in violation of an order or regulation issued pursuant to section 792(d) of this title. Any person who knowingly and willfully violates this paragraph after having been subject-

ed to a civil penalty for a prior violation of the same provision of any order or regulation issued pursuant to section 792(d) of this title shall be fined not more than $50,000, or imprisoned not more than six months, or both.

(4) Whenever it appears to the Federal Energy Administrator or any person authorized by the Federal Energy Administrator to exercise authority under section 792 of this title or section 796 of this title that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of subsection (a) of this section the Federal Energy Administrator or such person may request the Attorney General to bring a civil action to enjoin such acts or practices, and upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. In such action, the court may also issue mandatory injunctions commanding any person to comply with any provision, the violation of which is prohibited by subsection (a) of this section.

(5) Any person suffering legal wrong because of any act or practice arising out of any violation of subsection (a) of this section may bring a civil action for appropriate relief, including an action for a declaratory judgment or writ of injunction. United States district courts shall have jurisdiction of actions under this paragraph without regard to the amount in controversy. Nothing in this paragraph shall authorize any person to recover damages.

(Pub. L. 93-319, § 12, June 22, 1974, 88 Stat. 264.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 790 of this title.

§ 798. Definitions

(a) For purposes of this chapter and the Clean Air Act [42 U.S.C. 1857 et seq.] the term "Federal Energy Administrator" means the Administrator of the Federal Energy Administration established by Federal Energy Administration Act of 1974 [15 U.S.C. 761 et seq.]; except that until such Administrator takes office and after such Administration ceases to exist, such term means any officer of the United States designated as Federal Energy Administrator by the President for purposes of this chapter and section 119 of the Clean Air Act [42 U.S.C. 1857c-10]

(b) For purposes of this chapter, the term "petroleum product" means crude oil, residual fuel oil, or any refined petroleum product (as defined in section 752(5) of this title).

(Pub. L. 93-319, § 14, June 22, 1974, 88 Stat. 265.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this Act", meaning Pub. L. 93-319. For complete classification of this Act to the Code, see Short Title note set out under section 791 of this title.

The Clean Air Act, referred to in subsec. (a), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, which is classified generally to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1857 of Title 42 and Tables volume.

The Federal Energy Administration Act of 1974, referred to in subsec. (a), is Pub. L. 93-275, May 7, 1974, 88 Stat. 96, which is classified generally to chapter 16B (§ 761 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 761 of this title and Tables volume.

CHAPTER 17—PRODUCTION, MARKETING, AND USE OF BITUMINOUS COAL

SUBCHAPTER A—BITUMINOUS COAL CONSERVATION ACT OF 1935

§§ 801 to 827. Repealed. Apr. 26, 1937, ch. 127, § 20(a), 50 Stat. 90

Sections, act Aug. 30, 1935, ch. 824, §§ 1 to 23, 49 Stat. 991, comprised the Bituminous Coal Conservation Act of 1935.

SUBCHAPTER B—BITUMINOUS COAL ACT OF 1937

§§ 828 to 852. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 649, 651

Sections, act Apr. 26, 1937, ch. 127, §§ 1 to 22, 50 Stat. 75 to 91, related to the regulation of interstate commerce of bituminous coal.

Section 849 of this title was amended by acts Apr. 11, 1941, ch. 64, § 1(a), 55 Stat. 134; Apr. 24, 1943, ch. 68, 57 Stat. 68; May 21, 1943, ch. 97, 57 Stat. 82.

Section 852 of this title was added by act Apr. 11, 1941, ch. 64, § 2, 55 Stat. 134.

CHAPTER 18—TRANSPORTATION OF FIREARMS

§§ 901 to 910. Repealed. Pub. L. 90-351, title IV, § 906, June 19, 1968, 82 Stat. 234

Section 901, acts June 30, 1938, ch. 850, § 1, 52 Stat. 1250; Aug. 6, 1939, ch. 500, 53 Stat. 1222: Mar. 10, 1947, ch. 15, 61 Stat. 11; Oct. 3, 1961, Pub. L. 87-342, § 1, 75 Stat. 757, defined in pars. (1) to (7) the terms "person", "interstate or foreign commerce", "firearm", "manufacturer", "dealer", "fugitive from justice", and "ammunition", now covered in section 921(a)(1) to (3), (9, 10), (11), (14), and (16) of Title 18, respectively.

Section 902, acts June 30, 1938, ch. 850, § 2, 52 Stat. 1250; Oct. 3, 1961, Pub. L. 87-342, § 2, 75 Stat. 757, prohibited certain enumerated acts, including transporting, shipping, or receiving firearms or ammunition in commerce, subsecs. (a), (d) to (i) of which are now covered in section 922(a)(1), (c), (e) to (i) of Title 18, Crimes and Criminal Procedure, respectively, such subsecs. (d) to (i) also being covered generally in section 922(d) and such subsec. (i) in section 923(f), the presumption from possession rule of subsecs. (f) and (i) being omitted, and subsecs. (b) and (c) of which prohibited receipt with knowledge that transportation or shipment was in violation of former subsec. (a) or that the transportation or shipment was to a person without a license where State laws require prospective purchaser to exhibit a license to licensed manufacturer or dealer, respectively.

Section 903, act June 30, 1938, ch. 850, § 3, 52 Stat. 1251, provided for licenses to transport, ship, or receive firearms or ammunition, subsecs. (a), (b), and (d) of which are now covered in section 923(a), (b), and 922(b)(5), (k), 923(d), (f) of Title 18, respectively.

Section 904, act June 30, 1938, ch. 850, § 4, 52 Stat. 1252, excepted certain persons from the provisions of the chapter and is now covered by section 925(a) of Title 18.

Section 905, acts June 30, 1938, ch. 850, § 5, 52 Stat. 1252; Feb. 7, 1950, ch. 2, 64 Stat. 3, prescribed penalties for violations and is now covered by section 924(a) and (c) of Title 18.

Section 906, act June 30, 1938, ch. 850, § 6, 52 Stat. 1252, provided for effective date of chapter 18. Similar provisions are set out as a note under section 921 of Title 18.

Section 907, act June 30, 1938, ch. 850, § 7, 52 Stat. 1252, authorized rules and regulations and is now covered by section 926 of Title 18.

Section 908, act June 30, 1938, ch. 850, § 8, 52 Stat. 1252, contained separability clause and is now covered by section 928 of Title 18.

Section 909, act June 30, 1938, ch. 850, § 9, 52 Stat. 1252, provided for the Federal Firearms Act as the short title for chapter 18.

Section 910, act June 30, 1938, ch. 850, § 10, as added Sept. 15, 1965, Pub. L. 89-184, 79 Stat. 788, provided for relief from disabilities resulting from conviction, application of provisions, public interest, and publication in Federal Register, and is now covered by section 925(c) of Title 18.

Effective Date of Repeal

Repeal of sections effective 180 days after June 19, 1968, except that valid license issued thereunder shall not terminate until expiration according to terms of license unless sooner revoked or terminated pursuant to applicable law, see section 907 of Pub. L. 90-351, set out as a note under section 921 of Title 18, Crimes and Criminal Procedure.

CHAPTER 19—MISCELLANEOUS

Sec.

1001. Prize-fight films as subjects of interstate or foreign commerce.
1002. Golden Gate Bridge tolls; government traffic and personnel in performance of office business not subject to tolls.
1003. Authorization for free travel on Golden Gate Bridge; issuance, presentation, and acceptance; other authorization devices.
1004. Penalties.
1005. San Francisco-Oakland Bay Bridge tolls; government traffic and personnel on official business exempted; government personnel on Yerba Buena Island or Treasure Island exempted.
1006. Authorization for free travel on San Francisco-Oakland Bay Bridge; issuance, presentation, and acceptance; other authorization devices.
1007. Penalties.

§ 1001. Prize-fight films as subjects of interstate or foreign commerce

Every film or other pictorial representation of any prize fight or encounter of pugilists, under whatever name, transported into any State, Territory, or possession, for use, sale, storage, exhibition, or other disposition therein is divested of its character as a subject of interstate or foreign commerce to the extent that it shall upon crossing the boundary of such State, Territory, or possession, be subject to the operation and effect of the laws of such State, Territory, or possession enacted in the exercise of its police power.

(June 29, 1940, ch. 443, § 1, 54 Stat. 686.)

§ 1002. Golden Gate Bridge tolls; government traffic and personnel in performance of office business not subject to tolls

Tolls may be charged for the passage or transit over the Golden Gate Bridge of Government traffic, of military or naval personnel and their dependents, and of civilian employees of the Army and Navy traveling on Government business, but such tolls shall not be in excess of the tolls charged for the passage or transit of other like traffic over such bridge: *Provided, however,* That subject to the provisions of section 1003 of this title, military and naval personnel, and civilian employees of the Army and Navy, when such personnel or employees are engaged in the performance of official duties requiring the use of such bridge, together with the conveyances being used by them in the performance of such duties, shall have the use of such bridge free of toll.

(Mar. 14, 1944, ch. 92, § 1, 58 Stat. 116.)

Effective Date

Section 4 of act Mar. 14, 1944, provided: "The provisions of this Act [sections 1002 to 1004 of this title] shall take effect thirty days after the date of its enactment."

Section Referred to in Other Sections

This section is referred to in sections 1003, 1004 of this title.

§ 1003. Authorization for free travel on Golden Gate Bridge; issuance, presentation, and acceptance; other authorization devices

(a) The use of the Golden Gate Bridge free of toll, provided for in section 1002 of this title, shall be granted upon the presentation and surrender at the toll lanes of an authorization certifying that the traffic in question is entitled to such right. Such authorization shall be issued and signed by any military or naval officer designated for such purpose in accordance with regulations which shall be prescribed by the Secretary of the Army and the Secretary of the Navy, respectively. The names and signatures of officers so designated shall be furnished to the Golden Gate Bridge and Highway District, and thereafter authorizations signed by them shall be accepted by such bridge and highway district as prima facie evidence of the facts stated therein.

(b) Notwithstanding the provisions of subsection (a) of this section, such right to use the Golden Gate Bridge free of toll may be established by any other device or means which may be acceptable to the Golden Gate Bridge and Highway District; and the Secretary of the Army and the Golden Gate Bridge and Highway District, and the Secretary of the Navy and the Golden Gate Bridge and Highway District, may enter into any appropriate agreements to secure the effective, convenient, and just exercise of such right.

(Mar. 14, 1944, ch. 92, § 2, 58 Stat. 116.)

Codification

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011 to 3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

Secretary of the Air Force

For transfer of certain functions relating to finance and fiscal matters, insofar as they pertain to the Secretary of the Air Force, from the Secretary of the Army to the Secretary of the Air Force, see Secretary of Defense Transfer Order Nos. 25, Oct. 14, 1948, and 40 [App. B(61)], July 22, 1949.

Section Referred to in Other Sections

This section is referred to in sections 1002, 1004 of this title.

§ 1004. Penalties

Whoever secures or attempts to secure the exemption from toll provided for in sections 1002 to 1004 of this title or an authorization referred to in section 1003 of this title, knowing that he is not entitled thereto, and whoever signs or issues any such authorization certifying to such right of exemption, knowing that such right does not exist, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than $100 or by imprisonment for not more than ten days, or by both such fine and imprisonment.

(Mar. 14, 1944, ch. 92, § 3, 58 Stat. 116.)

CROSS REFERENCES

Misdemeanor, offense punishable by imprisonment not exceeding one year as, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 1005. San Francisco-Oakland Bay Bridge tolls; government traffic and personnel on official business exempted; government personnel on Yerba Buena Island or Treasure Island exempted

Tolls may be charged for the passage or transit over the San Francisco-Oakland Bay Bridge of Government traffic, or military, naval, or civilian personnel and their dependents, and of civilian employees of the Army and Navy traveling on Government business, but such tolls shall not be in excess of the tolls charged for the passage or transit of other like traffic over such bridge: *Provided, however,* That subject to the provisions of section 1006 of this title, military, Coast Guard, and naval personnel, and civilian employees of the Army and Navy and Coast Guard and personnel and employees of the National Ocean Survey, when such personnel or employees are engaged in the performance of official duties requiring the use of such bridge, together with the conveyances being used by them in the performance of such duties, shall have the use of such bridge free of toll: *Provided further,* That subject to the provisions of section 1006 of this title, military, Coast Guard, and naval personnel, civilian employees of the Army and Navy and Coast Guard and personnel and employees of the National Ocean Survey, and their dependents, when such personnel, employees, or dependents are resident or employed on Yerba Buena Island or Treasure Island, or on any vessel berthed at any point on said islands, together with the conveyances being used by them, when proceeding to or from said islands, shall have the use of such bridge free of toll.

(July 1, 1946, ch. 528, § 1, 60 Stat. 347.)

EFFECTIVE DATE

Section 4 of act July 1, 1946, provided that sections 1005 to 1007 of this title shall be effective thirty days after July 1, 1946.

TRANSFER OF FUNCTIONS

The Coast and Geodetic Survey was consolidated with the Weather Bureau of the Department of Commerce to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration and the offices of Director and Deputy Director of the Coast and Geodetic Survey were abolished by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the Survey, the Director of the Survey, and the officers, employees, and organizational entities of the Survey were transferred to the Secretary of Commerce and all personnel (including commissioned officers) and property of the Survey, not already transferred by 1950 Reorg. Plan No. 5, were deemed transferred to the Administration. Subsequently, the Environmental Science Services Administration was abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to title 5, which created the National Oceanic and Atmospheric Administration in the Department of Commerce. By order of the Acting Associate Administrator of NOAA, the organization name of the Coast and Geodetic Survey was changed to the National Ocean Survey.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1006, 1007 of this title.

§ 1006. Authorization for free travel on San Francisco-Oakland Bay Bridge; issuance, presentation, and acceptance; other authorization devices

(a) The use of the San Francisco-Oakland Bay Bridge free of toll, provided for in section 1005 of this title, shall be granted upon the presentation and surrender at the toll lanes of an authorization certifying that the traffic or person in question is entitled to such right. Such authorization shall be issued and signed by any officer or official designated for such purpose in accordance with regulations which shall be prescribed by the Secretary of the Department having control of the personnel exempted by section 1005 of this title. The names and signatures of officers so designated shall be furnished to the California Toll Bridge Authority and thereafter authorizations signed by them shall be accepted by such authority as prima facie evidence of the facts stated therein.

(b) Notwithstanding the provisions of subsection (a) of this section, such right to use the San Francisco-Oakland Bay Bridge free of toll may be established by any other device or means which may be acceptable to the California Toll Bridge Authority; and the Secretary of the appropriate Department and the California Toll Bridge Authority may enter into any appropriate agreements to secure the effective, convenient, and just exercise of such right.

(July 1, 1946, ch. 528, § 2, 60 Stat. 348.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1005, 1007 of this title.

§ 1007. Penalties

Whoever secures or attempts to secure the exemption from toll provided for in sections 1005 to 1007 of this title or an authorization referred to in section 1006 of this title, knowing that he is not entitled thereto, and whoever signs or issues any such authorization certifying to such right of exemption, knowing that such right does not exist, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than $100 or by imprisonment for not more than ten days, or by both such fine and imprisonment.

(July 1, 1946, ch. 528, § 3, 60 Stat. 348.)

CROSS REFERENCES

Misdemeanor, offense punishable by imprisonment not exceeding one year as, see section 1 of Title 18, Crimes and Criminal Procedure.

CHAPTER 20—REGULATION OF INSURANCE

Sec.
1011. Declaration of policy.
1012. Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948.
1013. Suspension until June 30, 1948, of application of certain Federal laws; Sherman Act applicable to agreements to, or acts of, boycott, coercion, or intimidation.
1014. Applicability of National Labor Relations Act and the Fair Labor Standards Act of 1938.
1015. Definition of "State."

§ 1011. Declaration of policy

Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

(Mar. 9, 1945, ch. 20, § 1, 59 Stat. 33.)

SEPARABILITY

Section 6 of act Mar. 9, 1945, provided: "If any provision of this Act [this chapter], or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected."

SHORT TITLE

Act Mar. 9, 1945, ch. 20, 59 Stat. 33 [this chapter], is popularly known as the McCarran-Ferguson Act.

§ 1012. Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948

(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided*, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended [15 U.S.C. 41 et seq.], shall be applicable to the business of insurance to the extent that such business is not regulated by State Law.

(Mar. 9, 1945, ch. 20, § 2, 59 Stat. 34; July 25, 1947, ch. 326, 61 Stat. 448.)

REFERENCES IN TEXT

The act of July 2, 1890, as amended, known as the Sherman Act, referred to in subsec. (b), is classified to sections 1 to 7 of this title.

The act of October 15, 1914, as amended, known as the Clayton Act, referred to in subsec. (b), is classified to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title and to sections 52 and 53 of Title 29, Labor. For further details, see References in Text note set out under section 12 of this title.

The act of September 26, 1914, known as the Federal Trade Commission Act, as amended, referred to in subsec. (b), is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

AMENDMENTS

1947—Act July 25, 1947, substituted "June 30, 1948" for "January 1, 1948".

§ 1013. Suspension until June 30, 1948, of application of certain Federal laws; Sherman Act applicable to agreements to, or acts of, boycott, coercion, or intimidation

(a) Until June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act [15 U.S.C. 41 et seq.], and the Act of June 19, 1936, known as the Robinson-Patman Anti-Discrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this chapter shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

(Mar. 9, 1945, ch. 20, § 3, 59 Stat. 34; July 25, 1947, ch. 326, 61 Stat. 448.)

REFERENCES IN TEXT

The act of July 2, 1890, as amended, known as the Sherman Act, referred to in subsecs. (a) and (b), is classified to sections 1 to 7 of this title.

The act of October 15, 1914, as amended, known as the Clayton Act, referred to in subsec. (a), is classified to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title and to sections 52 and 53 of Title 29, Labor. For further details see References in Text note set out under section 12 of this title.

The act of September 26, 1914, known as the Federal Trade Commission Act, referred to in subsec. (a), is generally classified to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

The act of June 19, 1936, known as the Robinson-Patman Anti-Discrimination Act, referred to in subsec. (a), is act June 19, 1936, ch. 592, §§ 1 to 4, 49 Stat. 1526. For complete classification of this Act to the Code, see Short Title note set out under section 13a of this title, and Tables volume.

AMENDMENTS

1947—Act July 25, 1947, substituted "June 30, 1948" for "January 1, 1948".

§ 1014. Applicability of National Labor Relations Act and the Fair Labor Standards Act of 1938

Nothing contained in this chapter shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act [29 U.S.C. 151 et seq.], or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.], or the Act of June 5, 1920, known as the Merchant Marine Act, 1920 [46 U.S.C. 861 et seq. and 911 et seq.].

(Mar. 9, 1945, ch. 20, § 4, 59 Stat. 34.)

References in Text

The Act of July 5, 1935, as amended, known as the National Labor Relations Act, referred to in text, is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables volume.

The Act of June 25, 1938, as amended, known as the Fair Labor Standards Act, referred to in text, is generally classified to chapter 8 (§ 201 et seq.) of Title 29. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables volume.

The Act of June 5, 1920, known as the Merchant Marine Act, 1920, referred to in text, is classified generally to chapters 24 and 25 (§§ 861 et seq. and 911 et seq.) of Title 46, Shipping. For complete classification of this Act to the Code, see References in Text note under section 889 of Title 46 and Tables volume.

§ 1015. Definition of "State"

As used in this chapter, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, Guam, and the District of Columbia.

(Mar. 9, 1945, ch. 20, § 5, 59 Stat. 34; Aug. 1, 1956, ch. 852, § 4, 70 Stat. 908.)

Amendments

1956—Act Aug. 1, 1956, included "Guam" in the definition of state.

Admission of Alaska and Hawaii to Statehood

Alaska was admitted into the Union on Jan. 3, 1959, upon the issuance of Proc. No. 3269, Jan. 3, 1959, 24 FR 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, upon the issuance of Proc. No. 3309, Aug. 21, 1959, 24 FR 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

CHAPTER 21—NATIONAL POLICY ON EMPLOYMENT AND PRODUCTIVITY

Sec.
1021. Declaration of policy.
1022. Economic Report of President.
    (a) Coverage of report; transmittal to Congress.
    (b) Supplementary reports.
    (c) Reference of report to joint committee.
1023. Council of Economic Advisers.
    (a) Creation; composition; qualifications; selection of chairman and vice chairman.
    (b) Employment of specialists, experts, and other personnel.
    (c) Duties.
    (d) Annual report.
    (e) Consultation with other groups and agencies; utilization of Governmental services and private research agencies.
    (f) Appropriations.
1024. Joint Economic Committee.
    (a) Composition.
    (b) Functions.
    (c) Vacancies; selection of chairman and vice chairman.
    (d) Hearings; employment and compensation of personnel; cost of stenographic services; utilization of Governmental services and private research agencies.
    (e) Appropriations.
    (f) Service as attorney or expert for committee.
1025. Printing of monthly publication by Joint Economic Committee entitled "Economic Indicators"; distribution.
1026. Repealed.

Chapter Referred to in Other Sections

This chapter is referred to in title 31 section 1322.

§ 1021. Declaration of policy

The Congress declares that it is the continuing policy and responsibility of the Federal Government to use all practicable means consistent with its needs and obligations and other essential considerations of national policy, with the assistance and cooperation of industry, agriculture, labor, and State and local governments, to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions under which there will be afforded useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and to promote maximum employment, production, and purchasing power.

(Feb. 20, 1946, ch. 33, § 2, 60 Stat. 23.)

Short Title

Congress in enacting this chapter provided by section 1 of act Feb. 20, 1946, that it should be known as the "Employment Act of 1946".

Section Referred to in Other Sections

This section is referred to in sections 1022, 1023 of this title.

§ 1022. Economic Report of President

(a) Coverage of report; transmittal to Congress

The President shall transmit to the Congress not later than January 20 of each year an economic report (hereinafter called the "Economic Report") setting forth (1) the levels of employment, production, and purchasing power obtaining in the United States and such levels needed to carry out the policy declared in section 1021 of this title; (2) current and foreseeable trends in the levels of employment, production, and purchasing power; (3) a review of the economic program of the Federal Government and a review of economic conditions affecting employment in the United States or any considerable portion thereof during the preceding year and of their effect upon employment, production, and purchasing power; and (4) a program for carrying out the policy declared in section 1021 of this title, together with such recommendations for legislation as he may deem necessary or desirable.

(b) Supplementary reports

The President may transmit from time to time to the Congress reports supplementary to the Economic Report, each of which shall include such supplementary or revised recommendations as he may deem necessary or desirable to achieve the policy declared in section 1021 of this title.

(c) Reference of report to joint committee

The Economic Report, and all supplementary reports transmitted under subsection (b) of this section, shall, when transmitted to Congress, be referred to the joint committee created by section 1024 of this title.

(Feb. 20, 1946, ch. 33, § 3, 60 Stat. 24; Aug. 2, 1946, ch. 753, title II, § 226, 60 Stat. 838; June 18, 1956, ch. 399, § 1, 70 Stat. 289.)

AMENDMENTS

1956—Subsec. (a). Act June 18, 1956, substituted "not later than January 20 of each year" for "at the beginning of each regular session (commencing with the year 1947)".

1946—Subsec. (a). Act Aug. 2, 1946, struck out "within 60 days after" preceding "the beginning of each regular session" and inserted in lieu thereof "at".

EFFECTIVE DATE OF 1946 AMENDMENT

Section effective Aug. 2, 1946, see note set out under section 72a of Title 2, The Congress.

§ 1023. Council of Economic Advisers

(a) Creation; composition; qualifications; selection of chairman and vice chairman

There is created in the Executive Office of the President a Council of Economic Advisers (hereinafter called the "Council"). The Council shall be composed of three members who shall be appointed by the President by and with the advice and consent of the Senate, and each of whom shall be a person who, as a result of his training, experience, and attainments, is exceptionally qualified to analyze and interpret economic developments, to appraise programs and activities of the Government in the light of the policy declared in section 1021 of this title, and to formulate and recommend national economic policy to promote employment, production, and purchasing power under free competitive enterprise. The President shall designate one of the members of the Council as chairman and one as vice chairman, who shall act as chairman in the absence of the chairman.

(b) Employment of specialists, experts, and other personnel

The Council is authorized to employ, and fix the compensation of, such specialists and other experts as may be necessary for the carrying out of its functions under this chapter, without regard to the civil-service laws, and is authorized, subject to the civil-service laws, to employ such other officers and employees as may be necessary for carrying out its functions under this chapter, and fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(c) Duties

It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Economic Report;

(2) to gather timely and authoritative information concerning economic developments and economic trends, both current and prospective, to analyze and interpret such information in the light of the policy declared in section 1021 of this title for the purpose of determining whether such developments and trends are interfering, or are likely to interfere, with the achievement of such policy, and to compile and submit to the President studies relating to such developments and trends;

(3) to appraise the various programs and activities of the Federal Government in the light of the policy declared in section 1021 of this title for the purpose of determining the extent to which such programs and activities are contributing, and the extent to which they are not contributing, to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national economic policies to foster and promote free competitive enterprise, to avoid economic fluctuations or to diminish the effects thereof, and to maintain employment, production, and purchasing power;

(5) to make and furnish such studies, reports thereon, and recommendations with respect to matters of Federal economic policy and legislation as the President may request.

(d) Annual report

The Council shall make an annual report to the President in December of each year.

(e) Consultation with other groups and agencies; utilization of Governmental services and private research agencies

In exercising its powers, functions and duties under this chapter—

(1) the Council may constitute such advisory committees and may consult with such representatives of industry, agriculture, labor, consumers, State and local governments, and other groups, as it deems advisable;

(2) the Council shall, to the fullest extent possible, utilize the services, facilities, and information (including statistical information) of other Government agencies as well as of private research agencies, in order that duplication of effort and expense may be avoided.

(f) Appropriations

To enable the Council to exercise its powers, functions, and duties under this chapter, there are authorized to be appropriated such sums as may be necessary.

(Feb. 20, 1946, ch. 33, § 4, 60 Stat. 24; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; June 16, 1961, Pub. L. 87-49, 75 Stat. 93.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (b), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

CODIFICATION

In subsec. (a), provisions that fixed the compensation of members of the Council have been omitted as obsolete. The positions of chairman and members of the Council are now under the Executive Schedule, see sections 5313 and 5315 of Title 5, Government Organization and Employees.

In subsec. (b), provisions that authorized the Council to fix the compensation of such specialists and other experts as may be necessary for the carrying out of its functions under this chapter, without regard to "the Classification Act of 1923, as amended", were omitted as obsolete. Sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the 1923 Act and all laws or parts of laws inconsistent with the 1949 Act. While section 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exceptions contained in this subsection because of section 1106(b) which provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by section 1106(a). The Classification Act of 1949 was repealed by Pub. L. 89-554, Sept. 6, 1966, § 8(a), 80 Stat. 632 (of which section 1 revised and enacted Title 5, Government Organization and Employees, into law). Section 5102 of Title 5 now contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Civil Service Commission to determine the applicability to specific positions and employees.

"Chapter 51 and subchapter III of chapter 53 of title 5" was substituted for "the Classification Act of 1949" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5.

AMENDMENTS

1961—Subsec. (f). Pub. L. 87-49 eliminated provisions which limited the appropriations for salaries of the members and officers and employees of the Council to not more than $345,000 for each fiscal year.

1949—Act Oct. 28, 1949, amended subsec. (b) by substituting "Classification Act of 1949" for "Classification Act of 1923".

REPEALS

Act Oct. 28, 1949, ch. 782, § 1106(a), 63 Stat. 972, set out in the credit of this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS

Certain functions of the Council of Economic Advisers transferred to the Chairman, see 1953 Reorg. Plan No. 9, eff. Aug. 1, 1953, 18 F.R. 4542, set out as a note under this section. 1953 Reorg. Plan No. 9 also abolished the office of vice chairman.

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law, see section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in the Appendix to Title 5, Government Organization and Employees.

EXECUTIVE ORDER No. 10802

Ex. Ord. No. 10802, Jan. 23, 1959, 24 F.R. 557, formerly set out as a note under this section, which established the Committee on Government Activities Affecting Prices and Costs, was revoked by Ex. Ord. No. 10928, Mar. 23, 1961, 26 F.R. 2547.

EXECUTIVE ORDER No. 11453

Ex. Ord. No. 11453, Jan. 24, 1969, 34 F.R. 1301, formerly set out as a note under this section, which established the Cabinet Committee on Economic Policy, was revoked by Ex. Ord. No. 11702, Jan. 25, 1973, 38 F.R. 2957, set out as a note under section 887d of Title 20, Education.

REORGANIZATION PLAN NO. 9 OF 1953

Eff. Aug. 1, 1953, 18 F.R. 4543, 67 Stat. 644

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, June 1, 1953, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended [see section 901 et seq. of Title 5, Government Organization and Employees].

COUNCIL OF ECONOMIC ADVISERS

The functions vested in the Council of Economic Advisers by section 4(b) of the Employment Act of 1946 (60 Stat. 24) [subsec. (b) of this section], and so much of the functions vested in the Council by section 4(c) of that Act [subsec. (c) of this section] as consists of reporting to the President with respect to any function of the Council under the said section 4(c) [subsec. (c) of this section], are hereby transferred to the Chairman of the Council of Economic Advisers. The position of Vice Chairman of the Council of Economic Advisers, provided for in the last sentence of section 4(a) of the said Act [subsec. (a) of this section] is hereby abolished.

§ 1024. Joint Economic Committee

(a) Composition

There is established a Joint Economic Committee, to be composed of ten Members of the Senate, to be appointed by the President of the Senate, and ten Members of the House of Representatives, to be appointed by the Speaker of the House of Representatives. In each case, the majority party shall be represented by six Members and the minority party shall be represented by four Members.

(b) Functions

It shall be the function of the joint committee—

(1) to make a continuing study of matters relating to the Economic Report;

(2) to study means of coordinating programs in order to further the policy of this chapter; and

(3) as a guide to the several committees of the Congress dealing with legislation relating to the Economic Report, not later than March 1 of each year (beginning with the year 1947) to file a report with the Senate and the House of Representatives containing its findings and recommendations with respect to each of the main recommendations made by the President in the Economic Report, and from time to time to make such other reports and recommendations to the Senate and House of Representatives as it deems advisable.

(c) Vacancies; selection of chairman and vice chairman

Vacancies in the membership of the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee, and shall be filled in the same manner as in the case of the original selection. The joint committee shall select a chairman and a vice chairman from among its members.

(d) Hearings; employment and compensation of personnel; cost of stenographic services; utilization of Governmental services and private research agencies

The joint committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings as it deems advisable, and, within the limitations of its appropriations, the joint committee is empowered to appoint and fix the compensation of such experts, consultants, technicians, and clerical and stenographic assistants, to procure such printing and binding, and to make such expenditures, as it deems necessary and advisable. The cost of stenographic services to report hearings of the joint committee, or any subcommittee thereof, shall not exceed 25 cents per hundred words. The joint committee is authorized to utilize the services, information, and facilities of the departments and establishments of the Government, and also of private research agencies.

(e) Appropriations

To enable the joint committee to exercise its powers, functions, and duties under this chapter, there are authorized to be appropriated for each fiscal year such sums as may be necessary, to be disbursed by the Secretary of the Senate on vouchers signed by the chairman or vice chairman, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

(f) Service as attorney or expert for committee

Service of one individual, until the completion of the investigation authorized by Senate Concurrent Resolution 26, Eighty-first Congress, as an attorney or expert for the joint committee, in any business or professional field, on a part-time basis, with or without compensation, shall not be considered as service or employment bringing such individual within the provisions of section 281, 283, or 284 of title 18, or of any other Federal law imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment or receipt of compensation in connection with any claim, proceeding, or matter involving the United States.

(Feb. 20, 1946, ch. 33, § 5, 60 Stat. 25; Aug. 2, 1946, ch. 753, title II, § 225, 60 Stat. 838; Feb. 2, 1948, ch. 42, 62 Stat. 16; Oct. 6, 1949, ch. 627, §§ 1, 2, 63 Stat. 721; June 18, 1956, ch. 399, § 2, 70 Stat. 290; Feb. 17, 1959, Pub. L. 86-1, 73 Stat. 3; Oct. 13, 1964, Pub. L. 88-661, 78 Stat. 1093; Jan. 25, 1967, Pub. L. 90-2, 81 Stat. 4; Dec. 27, 1974, Pub. L. 93-554, title I, § 101, 88 Stat. 1776.)

REFERENCES IN TEXT

Sections 281 and 283 of title 18, referred to in subsec. (f), were repealed by Pub. L. 87-849, § 2, Oct. 23, 1962, 76 Stat. 1126, except as they may apply to retired officers of the armed forces of the United States, and were supplanted by sections 203 and 205 of Title 18, Crimes and Criminal Procedure.

Section 284 of title 18, referred to in subsec. (f), was repealed by Pub. L. 87-849, § 2, Oct. 23, 1962, 76 Stat. 1126, and was supplanted by section 207 of title 18.

AMENDMENTS

1974—Subsec. (e). Pub. L. 93-554 added exception relating to requirement of vouchers for the disbursement of salaries of employees paid at an annual rate.

1967—Subsec. (a). Pub. L. 90-2 substituted "ten", "six", and "four" for "eight", "five", and "three" respectively.

1964—Subsec. (e). Pub. L. 88-661 authorized appropriations for such sums as may be necessary for each fiscal year and eliminated provisions which limited the authorization to a maximum of $125,000 yearly.

1959—Subsec. (a). Pub. L. 86-1 added one additional Senator and one Representative to the Committee, and substituted provisions requiring the majority party to be represented by five Members and the minority party to be represented by three Members for provisions which required representation to reflect as nearly as may be feasible the relative membership of the majority and minority parties.

1956—Subsec. (a). Act June 19, 1956, substituted "Joint Economic Committee" for "Joint Committee on the Economic Report".

1949—Subsec. (e). Act Oct. 6, 1949, § 1, substituted "$125,000" for "$50,000".

Subsec. (f). Act Oct. 6, 1949, § 2, added subsec. (f).

1948—Subsec. (b)(3). Act Feb. 2, 1948, changed the filing date of the Joint Committee's report from February 1 to March 1.

1946—Subsec. (b)(3). Act Aug. 2, 1946, changed the filing date of the Joint Committee's report from May 1 to February 1.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 101 of Pub. L. 93-554 provided in part that the amendment by Pub. L. 93-554 is effective Jan. 1, 1975.

EFFECTIVE DATE OF 1946 AMENDMENT

Section effective Aug. 2, 1946, see note set out under section 72a of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1022 of this title.

§ 1025. Printing of monthly publication by Joint Economic Committee entitled "Economic Indicators"; distribution

The Joint Economic Committee is authorized to issue a monthly publication entitled "Economic Indicators", and a sufficient quantity shall be printed to furnish one copy to each Member of Congress; the Secretary and the Sergeant at Arms of the Senate; the Clerk, Sergeant at Arms, and Doorkeeper of the House of Representatives; two copies to the libraries of the Senate and House, and the Congressional Library; seven hundred copies to the Joint Economic Committee; and the required number of copies to the Superintendent of Documents for distribution to depository libraries; and the Superintendent of Documents is authorized to have copies printed for sale to the public.

(June 23, 1949, ch. 237, 63 Stat. 264.)

CODIFICATION

Section was not enacted as a part of the Employment Act of 1946 which comprises this chapter.

"Joint Economic Committee" was substituted for "Joint Committee on the Economic Report" to conform to act June 18, 1956, ch. 399, § 2, 70 Stat. 290. See section 1024(a) of this title.

§ 1026. Repealed. Pub. L. 94-136, title VI, § 601, Nov. 28, 1975, 89 Stat. 742

Section, Pub. L. 92-210, § 4, Dec. 22, 1971, 85 Stat. 753; Pub. L. 93-34, May 14, 1973, 87 Stat. 72, created the President's National Commission on Productivity and authorized appropriations for its operation through June 30, 1973. Thereafter, the Commission's name was changed to the National Commission on Productivity and Work Quality by Pub. L. 93-311, June 8, 1974, 88 Stat. 236 and appropriations were authorized to continue operations through November 30, 1975, by Pub. L. 94-42, § 2, June 28, 1975, 89 Stat. 232, and Pub. L. 94-100, § 2, Oct. 1, 1975, 89 Stat. 483. See section 2401 et seq. of this title.

CHAPTER 22—TRADE-MARKS

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EFFECTIVE DATE

This chapter, act July 5, 1946, ch. 540, 60 Stat. 427, became effective one year from July 5, 1946, and repealed chapter 3 of this title as of that date. See notes under section 1051 of this title.

PRIOR LAWS

The Trade-Mark Act of 1905 superseded the Trade-Mark Act of Mar. 3, 1881, ch. 138, 21 Stat. 502, entitled "An Act to authorize the registration of trade-marks and protect the same," and also act Aug. 5, 1882, ch. 393, 22 Stat. 298, entitled "An Act relating to the registration of trade marks". Former section 109 of this title repealed all inconsistent acts and parts of acts, except so far as they might apply to certificates of registration issued under the Trade-Mark Act of Mar. 3, 1881, ch. 138, and act Aug. 5, 1882, ch. 393.

SUBCHAPTER I—THE PRINCIPAL REGISTER

§ 1051. Registration; application; payment of fees; designation of resident for service of process and notice

The owner of a trade-mark used in commerce may register his trade-mark under this chapter on the principal register established:

(a) By filing in the Patent and Trademark Office—

(1) a written application, in such form as may be prescribed by the Commissioner, verified by the applicant, or by a member of the firm or an officer of the corporation or association applying, specifying applicant's domicile and citizenship, the date of applicant's first use of the mark, the date of applicant's first use of the mark in commerce, the goods in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods, and including a statement to the effect that the person making the verification believes himself, or the firm, corporation, or association in whose behalf he makes the verification, to be the owner of the mark sought to be registered, that the mark is in use in commerce, and that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive: *Provided,* That in the case of every application claiming concurrent use the applicant shall state exceptions to his claim of exclusive use, in which he shall specify, to the extent of his knowledge, any concurrent use by others, the goods in connection with which and the areas in which each concurrent use exists, the periods of each use, and the goods and area for which the applicant desires registration;

(2) a drawing of the mark; and

(3) such number of specimens or facsimiles of the mark as actually used as may be required by the Commissioner.

(b) By paying into the Patent and Trademark Office the filing fee.

(c) By complying with such rules or regulations, not inconsistent with law, as may be prescribed by the Commissioner.

(d) If the applicant is not domiciled in the United States he shall designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with him or mailing to him a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Commissioner.

(July 5, 1946, ch. 540, title I, § 1, 60 Stat. 427; Oct. 9, 1962, Pub. L. 87-772, § 1, 76 Stat. 769; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (b). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (d). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Subsec. (a)(1). Pub. L. 87-772 substituted "as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive" for "as might be calculated to deceive", and deleted "or services" following "use by others, the goods".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

EFFECTIVE DATE

Section 46(a) of act July 5, 1946, provided in part that this chapter shall be in force and take effect one year from July 5, 1946.

REPEAL OF INCONSISTENT PROVISIONS; CERTAIN PROVISIONS NOT AFFECTED

Section 46(a) of act July 5, 1946, provided in part that all acts and parts of acts inconsistent with this chapter are repealed effective one year from July 5, 1946, but that "nothing contained in this Act [this chapter] shall be construed as limiting, restricting, modifying, or repealing any statute in force on the effective date of this Act [July 5, 1947] which does not relate to trade-marks, or as restricting or increasing the authority of any Federal department or regulatory agency except as may be specifically provided in this Act [this chapter]."

Section 48 of act July 5, 1946, provided that section 27 of Title 36, Patriotic Societies and Observances, is not repealed or affected by this chapter.

SEPARABILITY OF PROVISIONS

Section 50 of act July 5, 1946, provided "If any provision of this Act [this chapter] or the application of such provision to any person or circumstance is held invalid, the remainder of the Act shall not be affected thereby."

SHORT TITLE

Act July 5, 1946, ch. 540, 60 Stat. 427 [this chapter], is popularly known as the Lanham Act, and also as the Trademark Act of 1946.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce to the Secretary of Commerce, with certain exceptions, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

PENDING PROCEEDINGS AND EXISTING REGISTRATION AND RIGHTS UNDER PRIOR ACTS

Section 46(a) of act July 5, 1946, provided in part that this chapter, except as otherwise specifically provided therein, shall not affect any suit, proceeding or appeal pending on the effective date of this chapter and that the repeal of all inconsistent acts "shall not affect the validity of registrations granted or applied for under any of said Acts prior to the effective date of this Act [July 5, 1947], or rights or remedies thereunder except as provided in sections 8, 12, 14, 15, and 47 of this Act [sections 1058, 1062, 1064, and 1065 of this title and note under this section]."

Sections 46(b) and 47 of act July 5, 1946, provided:

"(b) Registrations now existing under the Act of March 3, 1881, or the Act of February 20, 1905 [sections 81 to 109 of this title], shall continue in full force and effect for the unexpired terms thereof and may be renewed under the provisions of section 9 of this Act [section 1059 of this title]. Such registrations and the renewals thereof shall be subject to and shall be entitled to the benefits of the provisions of this Act [this chapter] to the same extent and with the same force and effect as though registered on the principal register established by this Act [this chapter] except as limited in sections 8, 12, 14, and 15 of this Act [sections 1058, 1062, 1064, 1065, of this title]. Marks registered under the 'ten-year proviso' of section 5 of the Act of February 20, 1905, as amended [former section 85 of this title], shall be deemed to have become distinctive of the registrant's goods in commerce under paragraph (f) of section 2 of this Act [section 1052 of this title] and may be renewed under section 9 hereof [section 1059 of this title] as marks coming within said paragraph.

"Registrations now existing under the Act of March 19, 1920 [former sections 121 to 128 of this title], shall expire six months after the effective date of this Act [July 5, 1947], or twenty years from the dates of their registrations, whichever date is later. Such registrations shall be subject to and entitled to the benefits of the provisions of this Act [this chapter] relating to marks registered on the supplemental register established by this Act [this chapter], and may not be renewed unless renewal is required to support foreign registrations. In that event renewal may be effected on the supplemental register under the provisions of section 9 of this Act [section 1059 of this title].

"Marks registered under previous Acts may, if eligible, also be registered under this Act [this chapter].

"SEC. 47. (a) All applications for registration pending in the Patent Office at the effective date of this Act [July 5, 1947] may be amended, if practicable, to bring them under the provisions of this Act [this chapter]. The prosecution of such applications so amended and the grant of registrations thereon shall be proceeded with in accordance with the provisions of this Act [this chapter]. If such amendments are not made, the prosecution of said applications shall be proceeded with and registrations thereon granted in accordance with the Acts under which said applications were filed, and said Acts are hereby continued in force to this extent and for this purpose only, notwithstanding the foregoing general repeal thereof.

"(b) In any case in which an appeal is pending before the United States Court of Customs and Patent Appeals or any United States Circuit Court of Appeals or the United States Court of Appeals for the District of Columbia or the United States Supreme Court at the effective date of this Act [July 5, 1947], the court, if it be of the opinion that the provisions of this Act [this chapter] are applicable to the subject matter of the appeal, may apply such provision or may remand the case to the Commissioner or to the district court for the taking of additional evidence or a new trial or for reconsideration of the decision on the record as made, as the appellate court may deem proper."

Section 49 of said act July 5, 1946, provided: "Nothing herein [in this chapter] shall adversely affect the rights or the enforcement of rights in marks acquired in good faith prior to the effective date of this Act [July 5, 1947]."

Emergency Relief From Postal Situation Affecting Trademark Cases

Relief as to filing date of trademark application or registration and excusal of delayed fees or actions affected by postal situation beginning on Mar. 18, 1970, and ending on or about Mar. 30, 1970, see note set out under section 111 of Title 35, Patents.

Prior Provisions

Subsecs. (a) to (c) are from acts Feb. 20, 1905, ch. 592, §§ 1, 2, 33 Stat. 724; May 4, 1906, ch. 2081, § 1, 34 Stat. 168; Feb. 18, 1909, ch. 144, 35 Stat. 628; Apr. 11, 1930, ch. 132, § 4, 46 Stat. 155; June 10, 1938, ch. 332, § 1, 52 Stat. 638.

Subsec. (d) is from act Feb. 20, 1905, ch. 592, § 3, 33 Stat. 725.

Cross References

Emblems, insignia and names—
  False advertising or misuse of names to indicate Federal agency, see section 709 of Title 18, Crimes and Criminal Procedure.
  Swiss Confederation coat of arms, see section 708 of Title 18.

Red Cross members or agents, false personation, see section 917 of Title 18.

Section Referred to in Other Sections

This section is referred to in sections 1059, 1060, 1091, 1126 of this title.

§ 1052. Trade-marks registrable on principal register; concurrent registration

No trade-mark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

(a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute.

(b) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof.

(c) Consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the United States during the life of his widow, if any, except by the written consent of the widow.

(d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when applied to the goods of the applicant, to cause confusion, or to cause mistake, or to deceive: *Provided*, That when the Commissioner determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (i) the earliest of the filing dates of the applications pending or of any registration issued under this chapter; or (ii) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (iii) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Concurrent registrations may also be issued by the Commissioner when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Commissioner shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods in connection with which such mark is registered to the respective persons.

(e) Consists of a mark which, (1) when applied to the goods of the applicant is merely descriptive or deceptively misdescriptive of them, or (2) when applied to the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, except as indications of regional origin may be registrable under section 1054 of this title, or (3) is primarily merely a surname.

(f) Except as expressly excluded in paragraphs (a), (b), (c), and (d) of this section, nothing in this chapter shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The Commissioner may accept as prima facie evidence that the mark has become distinctive, as applied to the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years next preceding the date of the filing of the application for its registration.

(July 5, 1946, ch. 540, title I, § 2, 60 Stat. 428; Oct. 9, 1962, Pub. L. 87-772, § 2, 76 Stat. 769; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

References in Text

Acts Mar. 3, 1881, and Feb. 20, 1905, referred to in subsec. (d), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, § 46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

Amendments

1975—Subsec. (d). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Subsec. (d). Pub. L. 87-772, among other changes, substituted provisions authorizing the issuance of concurrent registrations to persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to the earliest of the filing dates of the applications pending or of any registration issued under this chapter, or July 5, 1947, in the case of registrations previously issued under the act of Mar. 3, 1881, or Feb. 20, 1905, and continuing in full force and effect on that date, or July 5, 1947, in the case of applications under the act of Feb. 20, 1905, and registered after July 5, 1947, for provisions which restricted issuance of concurrent registrations to persons entitled to use such mark as a result of their concurrent lawful use thereof in commerce prior to any of the filing dates of the applications involved, and provisions directing that issuance of the mark be upon such conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, for provisions which required issuance under conditions and limitations as to the mode or place of use of the goods in connection with which such registrations may be granted, and eliminated provisions which limited confusion, mistake, or deception to purchasers, required written notice of applications for concurrent registrations and of hearings thereon, and publication in the Official Gazette upon a decision to grant such a registration and permitted a court to order such a registration under section 4915 of the Revised Statutes.

Effective Date of 1975 Amendment

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

Repeal and Effect on Existing Rights

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of the Department of Commerce to the Secretary of Commerce, with certain exceptions, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Prior Provisions

Acts Feb. 20, 1905, ch. 592, § 5, 33 Stat. 725; Mar. 2, 1907, ch. 2573, § 1, 34 Stat. 1251; Feb. 18, 1911, ch. 113, 36 Stat. 918; Jan. 8, 1913, ch. 7, 37 Stat. 649; Mar. 19, 1920, ch. 104, § 9, 41 Stat. 535; June 7, 1924, ch. 341, 43 Stat. 647.

Marks Registered Under Ten-Year Proviso of Trade-Mark Act of 1905

Marks registered under the "ten-year proviso" of section 5 of the act of Feb. 20, 1905, as amended, deemed to have become distinctive of the registrant's goods in commerce under par. (f) of this section, see section 46(b) of act July 5, 1946, set out in note under section 1051 of this title.

Cross References

Incontestability of marks used for five consecutive years after registration, see section 1065 of this title.

Supplemental register, pars. (e) and (f) inapplicable to trade-marks on, see section 1094 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1064, 1068, 1091, 1094, 1126 of this title.

§ 1053. Service marks registrable

Subject to the provisions relating to the registration of trade-marks, so far as they are applicable, service marks used in commerce shall be registrable, in the same manner and with the same effect as are trade-marks, and when registered they shall be entitled to the protection provided in this chapter in the case of trade-marks, except when used so as to represent falsely that the owner thereof makes or sells the goods on which such mark is used. The Commissioner may establish a separate register for such service marks. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trade-marks.

(July 5, 1946, ch. 540, title I, § 3, 60 Stat. 429.)

Repeal and Effect on Existing Rights

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat.

1263, set out in the Appendix to Title 5, Government Organization and Employees.

Cross References

Definition of "service mark", see section 1126 of this title.

Section Referred to in Other Sections

This section is referred to in section 1126 of this title.

§ 1054. Collective marks and certification marks registrable

Subject to the provisions relating to the registration of trade-marks, so far as they are applicable, collective and certification marks, including indications of regional origin used in commerce, shall be registrable under this chapter, in the same manner and with the same effect as are trade-marks, by persons, and nations, States, municipalities, and the like, exercising legitimate control over the use of the marks sought to be registered, even though not possessing an industrial or commercial establishment, and when registered they shall be entitled to the protection provided in this chapter in the case of trade-marks, except when used so as to represent falsely that the owner or a user thereof makes or sells the goods or performs the services on or in connection with which such mark is used. The Commissioner may establish a separate register for such collective marks and certification marks. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trade-marks.

(July 5, 1946, ch. 540, title I, § 4, 60 Stat. 429.)

Repeal and Effect on Existing Rights

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Prior Provisions

Acts Feb. 20, 1905, ch. 592, § 1, 33 Stat. 724; May 4, 1906, ch. 2081, § 1, 34 Stat. 168; Feb. 18, 1909, ch. 144, 35 Stat. 628; Apr. 11, 1930, ch. 132, § 4, 46 Stat. 155; June 10, 1938, ch. 332, § 1, 52 Stat. 638.

Section Referred to in Other Sections

This section is referred to in sections 1052, 1064, 1126 of this title.

§ 1055. Use by related companies affecting validity and registration

Where a registered mark or a mark sought to be registered is or may be used legitimately by related companies, such use shall inure to the benefit of the registrant or applicant for registration, and such use shall not affect the validity of such mark or of its registration, provided such mark is not used in such manner as to deceive the public.

(July 5, 1946, ch. 540, title I, § 5, 60 Stat. 429.)

Repeal and Effect on Existing Rights

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

§ 1056. Disclaimer of unregistrable matter

(a) The Commissioner may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.

(b) No disclaimer, including those made under paragraph (d) of section 1057 of this title, shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services.

(July 5, 1946, ch. 540, title I, § 6, 60 Stat. 429; Oct. 9, 1962, Pub. L. 87-772, § 3, 76 Stat. 769.)

Amendments

1962—Pub. L. 87-772, among other changes, provided that an applicant may voluntarily disclaim a component of a mark sought to be registered.

Repeal and Effect on Existing Rights

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1057. Certificates of registration

(a) Issuance and form

Certificates of registration of marks registered upon the principal register shall be issued in the name of the United States of America, under the seal of the Patent and Trademark Office, and shall be signed by the Commissioner or have his signature placed thereon, and a record thereof shall be kept in the Patent and Trademark Office. The registration shall reproduce the mark, and state that the mark is registered on the principal register under this chapter, the date of the first use of the mark, the date of the first use of the mark in commerce, the particular goods or services for which it is registered, the number and date of the registration, the term thereof, the date on which the application for registration was received in the Patent and Trademark Office, and any conditions and limitations that may be imposed in the registration.

(b) Certificate as prima facie evidence

A certificate of registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registration, registrant's ownership of the mark, and of registrant's exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate,

subject to any conditions and limitations stated therein.

(c) Issuance to assignee

A certificate of registration of a mark may be issued to the assignee of the applicant, but the assignment must first be recorded in the Patent and Trademark Office. In case of change of ownership the Commissioner shall, at the request of the owner and upon a proper showing and the payment of the fee provided in this chapter, issue to such assignee a new certificate of registration of the said mark in the name of such assignee, and for the unexpired part of the original period.

(d) Surrender, cancellation, or amendment by registrant

Upon application of the registrant the Commissioner may permit any registration to be surrendered for cancellation, and upon cancellation appropriate entry shall be made in the records of the Patent and Trademark Office. Upon application of the registrant and payment of the prescribed fee, the Commissioner for good cause may permit any registration to be amended or to be disclaimed in part: *Provided,* That the amendment or disclaimer does not alter materially the character of the mark. Appropriate entry shall be made in the records of the Patent and Trademark Office and upon the certificate of registration or, if said certificate is lost or destroyed, upon a certified copy thereof.

(e) Copies of Patent and Trademark Office records as evidence

Copies of any records, books, papers, or drawings belonging to the Patent and Trademark Office relating to marks, and copies of registrations, when authenticated by the seal of the Patent and Trademark Office and certified by the Commissioner, or in his name by an employee of the Office duly designated by the Commissioner, shall be evidence in all cases wherein the originals would be evidence; and any person making application therefor and paying the fee required by law shall have such copies.

(f) Correction of Patent and Trademark Office mistake

Whenever a material mistake in a registration, incurred through the fault of the Patent and Trademark Office, is clearly disclosed by the records of the Office a certificate stating the fact and nature of such mistake, shall be issued without charge and recorded and a printed copy thereof shall be attached to each printed copy of the registration certificate and such corrected registration shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Commissioner a new certificate of registration may be issued without charge. All certificates of correction heretofore issued in accordance with the rules of the Patent and Trademark Office and the registrations to which they are attached shall have the same force and effect as if such certificates and their issue had been specifically authorized by statute.

(g) Correction of applicant's mistake

Whenever a mistake has been made in a registration and a showing has been made that such mistake occurred in good faith through the fault of the applicant, the Commissioner is authorized to issue a certificate of correction or, in his discretion, a new certificate upon the payment of the required fee: *Provided,* That the correction does not involve such changes in the registration as to require republication of the mark.

(July 5, 1946, ch. 540, title I, § 7, 60 Stat. 430; Aug. 17, 1950, ch. 733, 64 Stat. 459; Oct. 9, 1962, Pub. L. 87-772, § 4, 76 Stat. 770; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in three places.

Subsec. (c). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (d). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in two places.

Subsec. (e). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in two places.

Subsec. (f). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in two places.

1962—Subsec. (a). Pub. L. 87-772 substituted "signature placed" for "name printed", and eliminated provisions requiring an attestation by an assistant commissioner or by one of the law examiners designated by the Commissioner, together with printed copies of the drawing and statement of the applicant, to be kept in books for that purpose.

Subsec. (d). Pub. L. 87-772, among other charges, removed the requirement of a fee in connection with the voluntary surrender or cancellation of a registration.

Subsec. (e). Pub. L. 87-772 substituted "an employee of the Office" for "a chief of division", among other changes.

Subsec. (f). Pub. L. 87-772, among other changes, eliminated ", signed by the Commissioner and sealed with the seal of the Patent Office", which followed "nature of such mistake".

1950—Subsec. (a). Act Aug. 17, 1950, made it unnecessary to include in the certificate a statement of the applicant.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Subsecs. (a) and (c) are from acts Feb. 20, 1905, ch. 592, § 11, 33 Stat. 727; Mar. 4, 1925, ch. 535, § 3, 43 Stat. 1269.

Subsec. (e) is from act Mar. 19, 1920, ch. 104, § 7, 41 Stat. 535.

Subsec. (f) is from act Mar. 4, 1925, ch. 535, § 1, 43 Stat. 1268.

CROSS REFERENCES

Copies of records relating to trade-marks as evidence, see section 1744 of Title 28, Judiciary and Judicial Procedure.

Supplemental register, subsec. (b) inapplicable to trade-marks on, see section 1094 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Effect of rule 44 on this section, see note by Advisory Committee under rule 44, Title 28, Appendix, Judiciary and Judicial Procedure.

Proof of official record, see rule 44.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1094 of this title.

§ 1058. Duration of registration

(a) Affidavit of continuing use

Each certificate of registration shall remain in force for twenty years: *Provided*, That the registration of any mark under the provisions of this chapter shall be canceled by the Commissioner at the end of six years following its date, unless within one year next preceding the expiration of such six years the registrant shall file in the Patent and Trademark Office an affidavit showing that said mark is still in use or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. Special notice of the requirement for such affidavit shall be attached to each certificate of registration.

(b) Registration published under other provisions of law

Any registration published under the provisions of subsection (c) of section 1062 of this title shall be canceled by the Commissioner at the end of six years after the date of such publication unless within one year next preceding the expiration of such six years the registrant shall file in the Patent and Trademark Office an affidavit showing that said mark is still in use or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

(c) Notification of acceptance or refusal of affidavits

The Commissioner shall notify any registrant who files either of the above-prescribed affidavits of his acceptance or refusal thereof and, if a refusal, the reasons therefor.

(July 5, 1946, ch. 540, title I, § 8, 60 Stat. 431; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (b). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, and saving clause, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, § 12, 33 Stat. 727.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1113 of this title.

§ 1059. Renewal of registration

(a) Period of renewal; time for renewal

Each registration may be renewed for periods of twenty years from the end of the expiring period upon payment of the prescribed fee and the filing of a verified application therefor, setting forth those goods or services recited in the registration on or in connection with which the mark is still in use in commerce and having attached thereto, a specimen or facsimile showing current use of the mark, or showing that any nonuse is due to special circumstances which excuse such nonuse and it is not due to any intention to abandon the mark. Such application may be made at any time within six months before the expiration of the period for which the registration was issued or renewed, or it may be made within three months after such expiration on payment of the additional fee herein prescribed.

(b) Notification of refusal of renewal

If the Commissioner refuses to renew the registration, he shall notify the registrant of his refusal and the reasons therefor.

(c) Applicant for renewal not domiciled in United States

An applicant for renewal not domiciled in the United States shall be subject to and comply with the provisions of section 1051(d) of this title.

(July 5, 1946, ch. 540, title I, § 9, 60 Stat. 431; Oct. 9, 1962, Pub. L. 87-772, § 5, 76 Stat. 770.)

AMENDMENTS

1962—Pub. L. 87-772 designated existing provisions as subsecs. (a) and (c), added subsec. (b), and among other changes, amended subsec. (a) by substituting provisions requiring a verified application specifying the goods or services recited in the registration on or in connection with which the mark is still in use in commerce and having attached a specimen showing current use of the mark, or showing that any nonuse is due to special circumstances which excuse the nonuse and that it's not due to an intention to abandon the mark, for provisions requiring an affidavit by the registrant stating that the mark is still in use in commerce.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

RENEWAL UNDER PRIOR ACTS

Renewal of registrations under prior acts, see section 46(b) of act July 5, 1946, set out in note under section 1051 of this title.

EXTENSION OF TIME FOR RENEWAL BY FOREIGN REGISTRANT

Act July 17, 1946, ch. 587, 60 Stat. 568, provided for extension of time for renewal by a foreign registrant and expired by its own terms July 17, 1949.

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, § 12, 33 Stat. 727.

§ 1060. Assignment of mark; execution; recording; purchaser without notice

A registered mark or a mark for which application to register has been filed shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark, and in any such assignment it shall not be necessary to include the goodwill of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted. Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment and when recorded in the Patent and Trademark Office the record shall be prima facie evidence of execution. An assignment shall be void as against any subsequent purchaser for a valuable consideration without notice, unless it is recorded in the Patent and Trademark Office within three months after the date thereof or prior to such subsequent purchase. A separate record of assignments submitted for recording hereunder shall be maintained in the Patent and Trademark Office.

An assignee not domiciled in the United States shall be subject to and comply with the provisions of section 1051(d) of this title.

(July 5, 1946, ch. 540, title I, § 10, 60 Stat. 431; Oct. 9, 1962, Pub. L. 87-772, § 6, 76 Stat. 770; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in three places.

1962—Pub. L. 87-772 substituted provisions which require a separate record of assignments to be kept in the Patent Office, for provisions which required the Commissioner to keep such record, and eliminated provisions permitting the cancellation of any assigned registration at any time if the registered mark is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods or services in connection with which the mark is used.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, § 10, 33 Stat. 727.

§ 1061. Execution of acknowledgments and verifications

Acknowledgments and verifications required under this chapter may be made before any person within the United States authorized by law to administer oaths, or, when made in a foreign country, before any diplomatic or consular officer of the United States or before any official authorized to administer oaths in the foreign country concerned whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States, and shall be valid if they comply with the laws of the state or country where made.

(July 5, 1946, ch. 540, title I, § 11, 60 Stat. 432.)

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, § 2, 33 Stat. 724; Feb. 18, 1909, ch. 144, 35 Stat. 627.

§ 1062. Publication

(a) Examination and publication

Upon the filing of an application for registration and payment of the fee provided in this chapter, the Commissioner shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and, if on such examination it shall appear that the applicant is entitled to registration, the Commissioner shall cause the mark to be published in the Official Gazette of the Patent and Trademark Office: *Provided,* That in the case of an applicant claiming concurrent use, or in the case of an application to be placed in an interference as provided for in section 1066 of this title the mark, if otherwise registrable, may be published subject to the determination of the rights of the parties to such proceedings.

(b) Refusal of registration; amendment of application; abandonment

If the applicant is found not entitled to registration, the examiner shall advise the applicant thereof and of the reasons therefor. The applicant shall have a period of six months in which to reply or amend his application, which shall then be reexamined. This procedure may be repeated until (1) the examiner finally refuses registration of the mark or (2) the applicant fails for a period of six months to reply or amend or appeal, whereupon the application shall be deemed to have been abandoned, unless it can be shown to the satisfaction of the Commissioner that the delay in responding was unavoidable, whereupon such time may be extended.

(c) Republication of marks registered under prior acts

A registrant of a mark registered under the provisions of the Act of March 3, 1881, or the Act of February 20, 1905, may, at any time prior to the expiration of the registration thereof, upon the payment of the prescribed fee file with the Commissioner an affidavit setting forth those goods stated in the registration on which said mark is in use in commerce and that the registrant claims the benefits of this chapter for said mark. The Commissioner shall publish notice thereof with a reproduction of said mark in the Official Gazette, and notify the registrant of such publication and of the requirement for the affidavit of use or nonuse as provided for in subsection (b) of section 1058 of this title. Marks published under this subsection shall not be subject to the provisions of section 1063 of this title.

(July 5, 1946, ch. 540, title I, § 12, 60 Stat. 432; Oct. 9, 1962, Pub. L. 87-772, § 7, 76 Stat. 771; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

References in Text

Acts Mar. 3, 1881 and Feb. 20, 1905, referred to in subsec. (c), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, § 46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

Amendments

1975—Subsec. (a). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Subsec. (a). Pub. L. 87-772 added the proviso permitting publication of the mark in the case of an applicant claiming concurrent use, or an application to be placed in an interference, if such mark is otherwise registrable, subject to the determination of the rights of the parties.

Subsec. (c). Pub. L. 87-772 inserted "Marks published under" preceding "this subsection shall not be subject".

Effective Date of 1975 Amendment

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

Repeal and Effect on Existing Rights

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Prior Provisions

Acts Feb. 20, 1905, ch. 592, § 6, 33 Stat. 726; Mar. 2, 1907, ch. 2573, § 2, 34 Stat. 1252.

Cross References

Cancellation of registration, see section 1064 of this title.

Supplemental register, subsec. (a) inapplicable to trade-marks on, see section 1094 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1058, 1063, 1064, 1065, 1091, 1094, 1113, 1115 of this title.

§ 1063. Opposition to registration

Any person who believes that he would be damaged by the registration of a mark upon the principal register may, upon payment of the required fee, file a verified opposition in the Patent and Trademark Office, stating the grounds therefor, within thirty days after the publication under subsection (a) of section 1062 of this title of the mark sought to be registered. Upon written request prior to the expiration of the thirty-day period, the time for filing opposition shall be extended for an additional thirty days, and further extensions of time for filing opposition may be granted by the Commissioner for good cause. The Commissioner shall notify the applicant of each extension of the time for filing opposition. An unverified opposition may be filed by a duly authorized attorney, but such opposition shall be null and void unless verified by the opposer within a reasonable time after such filing to be fixed by the Commissioner. An opposition may be amended under such conditions as may be prescribed by the Commissioner.

(July 5, 1946, ch. 540, title I, § 13, 60 Stat. 433; Oct. 9, 1962, Pub. L. 87-772, § 8, 76 Stat. 771; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949; Jan. 2, 1975, Pub. L. 93-600, § 1, 88 Stat. 1955.)

Amendments

1975—Pub. L. 93-600 substituted provisions relating to extensions of time for filing opposition upon written request prior to the expiration of the thirty-day period for an additional thirty days, and further extensions for good cause, for provisions relating to extensions of the time for filing opposition for good cause shown.

Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Pub. L. 87-772 inserted "An opposition may be amended under such conditions as may be prescribed by the Commissioner", and eliminated "notice of" which followed "file a verified" and "time for filing".

Effective Date of 1975 Amendments

Section 4 of Pub. L. 93-600 provided that: "This Act [amending this section and sections 1071 and 1117 of this title] shall become effective upon enactment [Jan. 2, 1975], but shall not affect any suit, proceeding, or appeal then pending."

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

Repeal and Effect on Existing Rights

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§ 6, 7, 33 Stat. 726; Mar. 2, 1907, ch. 2573, § 2, 34 Stat. 1252.

CROSS REFERENCES

Supplemental register, section inapplicable to trademarks on, see section 1094 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1094 of this title.

§ 1064. Cancellation of registration

A verified petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed by any person who believes that he is or will be damaged by the registration of a mark on the principal register established by this chapter, or under the Act of March 3, 1881, or the Act of February 20, 1905—

(a) within five years from the date of the registration of the mark under this chapter; or

(b) within five years from the date of publication under section 1062(c) of this title of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905; or

(c) at any time if the registered mark becomes the common descriptive name of an article or substance, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 1054 of this title or of subsections (a), (b), or (c) of section 1052 of this title for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration thereunder, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used; or

(d) at any time if the mark is registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 1062 of this title; or

(e) at any time in the case of a certification mark on the ground that the registrant (1) does not control, or is not able legitimately to exercise control over, the use of such mark, or (2) engages in the production or marketing of any goods or services to which the certification mark is applied, or (3) permits the use of the certification mark for purposes other than to certify, or (4) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies:

Provided, That the Federal Trade Commission may apply to cancel on the grounds specified in subsections (c) and (e) of this section any mark registered on the principal register established by this chapter, and the prescribed fee shall not be required.

(July 5, 1946, ch. 540, title I, § 14, 60 Stat. 433; Oct. 9, 1962, Pub. L. 87-772, § 9, 76 Stat. 771.)

REFERENCES IN TEXT

Acts Mar. 3, 1881 and Feb. 20, 1905, referred to in opening par. and pars. (b) and (d), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, § 46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

AMENDMENTS

1962—Pub. L. 87-772 inserted provisions which require a verified petition to cancel a registration, redesignated former par. (d) as (e), added par. (d) which is composed of provisions formerly part of par. (c), and in said par. (c), substituted "registrant" for "assignee", and eliminated "on which the patent has expired" preceding "or has been abandoned", and "has been assigned and" preceding "is being used by".

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of the functions of the Federal Trade Commission, with certain exceptions, to the chairman of such commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, § 13, 33 Stat. 728.

CROSS REFERENCES

Interference and opposition proceedings, see section 1067 of this title.

Supplemental register, section inapplicable to trademarks on, see section 1094 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1065, 1094 of this title.

§ 1065. Incontestability of right to use mark under certain conditions

Except on a ground for which application to cancel may be filed at any time under subsections (c) and (e) of section 1064 of this title, and except to the extent, if any, to which the use of a mark registered on the principal register infringes a valid right acquired under the law of any State or Territory by use of a mark or trade name continuing from a date prior to the date of the publication under this chapter of such registered mark, the right of the registrant to use such registered mark in commerce for the goods or services on or in connection with which such registered mark has been in continuous use for five consecutive years subsequent to the date of such registration and is still in use in commerce, shall be incontestable: *Provided*, That—

(1) there has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register; and

(2) there is no proceeding involving said rights pending in the Patent and Trademark Office or in a court and not finally disposed of; and

(3) an affidavit is filed with the Commissioner within one year after the expiration of any such five-year period setting forth those goods or services stated in the registration on or in connection with which such mark has

been in continuous use for such five consecutive years and is still in use in commerce, and other matters specified in subsections (1) and (2) of this section; and

(4) no incontestable right shall be acquired in a mark which is the common descriptive name of any article or substance, patented or otherwise.

Subject to the conditions above specified in this section, the incontestable right with reference to a mark registered under this chapter shall apply to a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905, upon the filing of the required affidavit with the Commissioner within one year after the expiration of any period of five consecutive years after the date of publication of a mark under the provisions of subsection (c) of section 1062 of this title.

The Commissioner shall notify any registrant who files the above-prescribed affidavit of the filing thereof.

(July 5, 1946, ch. 540, title I, § 15, 60 Stat. 433; Oct. 9, 1962, Pub. L. 87-772, § 10, 76 Stat. 771; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

REFERENCES IN TEXT

Acts Mar. 3, 1881 and Feb. 20, 1905, referred to in text, are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, § 46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

AMENDMENTS

1975—Par. (2). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Pub. L. 87-772 substituted "(c) and (e) of section 1064" for "(c) and (d) of section 1064" in the text preceding par. (1), and eliminated "or trade name" following "in a mark" in par. (4).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Registration of marks used exclusively and continuously for five years preceding application, see section 1052 of this title.

Supplemental register, section inapplicable to trademarks on, see section 1094 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1094, 1115 of this title.

§ 1066. Interference; declaration by Commissioner

Whenever application is made for the registration of a mark which so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely when applied to the goods or when used in connection with the services of the applicant to cause confusion or mistake or to deceive, the Commissioner may declare that an interference exists. No interference shall be declared between an application and the registration of a mark the right to the use of which has become incontestable.

(July 5, 1946, ch. 540, title I, § 16, 60 Stat. 434; Oct. 9, 1962, Pub. L. 87-772, § 11, 76 Stat. 771.)

AMENDMENTS

1962—Pub. L. 87-772 deleted "purchasers" which followed "or to deceive".

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, § 7, 33 Stat. 726.

CROSS REFERENCES

Cancellation of registration, see section 1064 of this title.

Supplemental register, section inapplicable to trademarks on, see section 1094 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1062, 1094 of this title.

§ 1067. Interference, opposition, and proceedings for concurrent use registration or for cancellation; notice; Trademark Trial and Appeal Board

In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Commissioner shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

The Trademark Trial and Appeal Board shall include the Commissioner, the Assistant Commissioners, and such Patent and Trademark Office employees, designated by the Commissioner and whose qualifications have been approved by the Civil Service Commission as being adequate for appointment to the position of examiner in charge of interferences. Each case shall be heard by at least three members of the Board, the members hearing such case to be designated by the Commissioner.

(July 5, 1946, ch. 540, title I, § 17, 60 Stat. 434; Aug. 8, 1958, Pub. L. 85-609, § 1(a), 72 Stat. 540; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1958—Pub. L. 85-609 substituted "a Trademark Trial and Appeal Board" for "the examiner in charge of interferences" in first paragraph, and added second paragraph relating to the composition of the Board.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT; APPLICABILITY

Section 3 of Pub. L. 85-609 provided that: "This Act [amending this section and sections 1070, 1071, 1092 and 1113 of this title] shall take effect on approval [August 8, 1958]; it shall apply to ex parte appeals taken to the Commissioner prior to the date of approval which have not been heard but shall not apply to any such appeal which has been heard or decided in which event further proceedings may be had as though this Act had not been passed; it shall apply to inter partes cases instituted prior to the date of approval which have not been heard by an examiner of interferences, but shall not apply to any such case which has been heard or decided by an examiner of interferences in which event further proceedings may be had as though this Act had not passed."

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

REORGANIZATION PLAN NO. 5 OF 1950

Section 2 of Pub. L. 85-609 provided that: "The provisions of this Act [amending this section and sections 1070, 1071, 1092 and 1113 of this title] shall be subject to Reorganization Plan No. 5 of 1950 (64 Stat. 1263)."

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, § 7, 33 Stat. 726.

CROSS REFERENCES

Supplemental register, section inapplicable to trademarks on, see section 1094 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1094 of this title.

§ 1068. Action of Commissioner in interference, opposition, and proceedings for concurrent use registration or for cancellation

In such proceedings the Commissioner may refuse to register the opposed mark, may cancel or restrict the registration of a registered mark, or may refuse to register any or all of several interfering marks, or may register the mark or marks for the person or persons entitled thereto, as the rights of the parties under this chapter may be established in the proceedings: *Provided,* That in the case of the registration of any mark based on concurrent use, the Commissioner shall determine and fix the conditions and limitations provided for in subsection (d) of section 1052 of this title.

(July 5, 1946, ch. 540, title I, § 18, 60 Stat. 435.)

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §§ 7, 13, 33 Stat. 726, 728.

CROSS REFERENCES

Supplemental register, section inapplicable to trademarks on, see section 1094 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1094 of this title.

§ 1069. Application of equitable principles in inter partes proceedings

In all inter partes proceedings equitable principles of laches, estoppel, and acquiescence, where applicable may be considered and applied. The provisions of this section shall also govern proceedings heretofore begun in the Patent and Trademark Office and not finally determined.

(July 5, 1946, ch. 540, title I, § 19, 60 Stat. 434; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1070. Appeals to Trademark Trial and Appeal Board from decisions of examiners

An appeal may be taken to the Trademark Trial and Appeal Board from any final decision of the examiner in charge of the registration of marks upon the payment of the prescribed fee.

(July 5, 1946, ch. 540, title I, § 20, 60 Stat. 435; Aug. 8, 1958, Pub. L. 85-609, § 1(b), 72 Stat. 540.)

AMENDMENTS

1958—Pub. L. 85-609 substituted "Trademark Trial and Appeal Board" for "Commissioner in person" and "fee" for "fees", and by striking out "of interferences or" which followed "examiner in charge".

EFFECTIVE DATE OF 1958 AMENDMENT; APPLICABILITY

For effective date of amendment by Pub. L. 85-609, and its applicability, see section 3 of Pub. L. 85-609, set out as a note under section 1067 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

REORGANIZATION PLAN NO. 5 OF 1950

Amendment of section by Pub. L. 85-609 as subject to Reorganization Plan No. 5 of 1950, see note set out under section 1067 of this title.

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §§ 8, 13, 33 Stat. 726, 728.

§ 1071. Appeal to courts

(a) Persons entitled to appeal; Court of Customs and Patent Appeals; waiver of civil action; election of civil action by adverse party; procedure

(1) An applicant for registration of a mark, party to an interference proceeding, party to an opposition proceeding, party to an application to register as a lawful concurrent user, party to a cancellation proceeding, a registrant who has filed an affidavit as provided in section 1058 of this title, or an applicant for renewal, who is dissatisfied with the decision of the Commissioner or Trademark Trial and Appeal Board, may appeal to the United States Court of Customs and Patent Appeals thereby waiving his right to proceed under subsection (b) of this section: *Provided*, That such appeal shall be dismissed if any adverse party to the proceeding, other than the Commissioner, shall, within twenty days after the appellant has filed notice of appeal according to subsection (a)(2) of this section, files notice with the Commissioner that he elects to have all further proceedings conducted as provided in subsection (b) of this section. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under said subsection (b) of this section, in default of which the decision appealed from shall govern the further proceedings in the case.

(2) Such an appeal to the United States Court of Customs and Patent Appeals shall be taken by filing a notice of appeal with the Commissioner, within sixty days after the date of the decision appealed from or such longer time after said date as the Commissioner appoints. The notice of such appeal shall specify the party or parties taking the appeal, shall designate the decision or part thereof appealed from, and shall state that the appeal is taken to said court.

(3) The court shall, before hearing such appeal, give notice of the time and place of the hearing to the Commissioner and the parties thereto. The Commissioner shall transmit to the court certified copies of all the necessary original papers and evidence in the case specified by the appellant and any additional papers and evidence specified by the appellee, and in an ex parte case the Commissioner shall furnish the court with a brief explaining the grounds of the decision of the Patent and Trademark Office, touching all the points involved in the appeal.

(4) The court shall decide such appeal on the evidence produced before the Patent and Trademark Office. The court shall return to the Commissioner a certificate of its proceedings and decision, which shall be entered of record in the Patent and Trademark Office and govern further proceedings in the case.

(b) Civil action; persons entitled to; jurisdiction of court; status of Commissioner; procedure

(1) Whenever a person authorized by subsection (a) of this section to appeal to the United States Court of Customs and Patent Appeals is dissatisfied with the decision of the Commissioner or Trademark Trial and Appeal Board, said person may, unless appeal has been taken to said Court of Customs and Patent Appeals, have remedy by a civil action if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints or as provided in subsection (a) of this section. The court may adjudge that an applicant is entitled to a registration upon the application involved, that a registration involved should be canceled, or such other matter as the issues in the proceeding require, as the facts in the case may appear. Such adjudication shall authorize the Commissioner to take any necessary action, upon compliance with the requirements of law.

(2) The Commissioner shall not be made a party to an inter partes proceeding under this subsection, but he shall be notified of the filing of the complaint by the clerk of the court in which it is filed and shall have the right to intervene in the action.

(3) In all cases where there is no adverse party, a copy of the complaint shall be served on the Commissioner; and all the expenses of the proceedings shall be paid by the party bringing them, whether the final decision is in his favor or not. In suits brought hereunder, the record in the Patent and Trademark Office shall be admitted on motion of any party, upon such terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of any party to take further testimony. The testimony and exhibits of the record in the Patent and Trademark Office, when admitted, shall have the same effect as if originally taken and produced in the suit.

(4) Where there is an adverse party, such suit may be instituted against the party in interest as shown by the records of the Patent and Trademark Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts

not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs.

(July 5, 1946, ch. 540, title I, § 21, 60 Stat. 435; July 19, 1952, ch. 950, § 2, 66 Stat. 814; Aug. 8, 1958, Pub. L. 85-609, § 1(c), 72 Stat. 540; Oct. 9, 1962, Pub. L. 87-772, § 12, 76 Stat. 771; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949; Jan. 2, 1975, Pub. L. 93-600, § 2, 88 Stat. 1955.)

CODIFICATION

Pub. L. 93-596, which provided for the substitution of "Patent and Trademark Office" for "Patent Office" each time appearing in this chapter, became effective Jan. 2, 1975, as did Pub. L. 93-600, which in the course of amending subsecs. (a)(3) and (4) of this section, referred merely to "Patent Office". "Patent and Trademark Office" has been substituted for "Patent Office" in subsecs. (a)(3) and (4) on authority of Pub. L. 93-596.

AMENDMENTS

1975—Subsec. (a)(2). Pub. L. 93-600 substituted provisions relating to filing of notice of appeal with the Commissioner and the contents of such notice of appeal, for provisions relating to giving notice of appeal to the Commissioner and requiring filing in the Patent Office reasons for appeal.

Subsec. (a)(3). Pub. L. 93-600 added provision requiring the Commissioner to furnish the court with a brief explaining the grounds of the decision of the Office.

Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (a)(4). Pub. L. 93-600 substituted "decide" for "hear and determine" and struck out "Upon its determination," preceding "the court shall return" and provision requiring the decision to be confined to the points set forth in the reasons of appeal.

Pub. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in two places.

Subsec. (b)(3). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in two places.

Subsec. (b)(4). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Pub. L. 87-772 amended the section generally, and among other changes, incorporated with necessary changes in language, the various provisions of Title 35, Patents, relating to the procedure of appeals to the Court of Customs and Patent Appeals and review by civil action in patent cases, which had previously been incorporated by reference only.

1958—Pub. L. 85-609 authorized appeals by persons dissatisfied with the decision of the Trademark Trial and Appeal Board, and substituted "Trademark Trial and Appeal Board" for "Commissioner" in the proviso.

1952—Act July 19, 1952, substituted references to new Title 35 for repealed section of Title 35.

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 93-600 effective on Jan. 2, 1975, but not affecting any suit, proceeding, or appeal then pending, see section 4 of Pub. L. 93-600, set out as a note under section 1063 of this title.

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT; APPLICABILITY

For effective date of amendment of this section by Pub. L. 85-609, and its applicability, see section 3 of Pub. L. 85-609, set out as a note under section 1067 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

REORGANIZATION PLAN NO. 5 OF 1950

Amendment of section by Pub. L. 85-609 as subject to Reorganization Plan No. 5 of 1950, see note set out under section 1067 of this title.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§ 9, 22, 33 Stat. 727, 729; Mar. 2, 1929, ch. 488, § 2(b), 45 Stat. 1478.

CROSS REFERENCES

Notice of appeal to be given to the Commissioner of Patents, see section 1116 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 28 section 1542.

§ 1072. Registration as constructive notice of claim of ownership

Registration of a mark on the principal register provided by this chapter or under the Act of March 3, 1881, or the Act of February 20, 1905, shall be constructive notice of the registrant's claim of ownership thereof.

(July 5, 1946, ch. 540, title I, § 22, 60 Stat. 435.)

REFERENCES IN TEXT

Acts Mar. 3, 1881, and Feb. 20, 1905, referred to in text, are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, § 46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

CROSS REFERENCES

Duty of registrant to give actual notice of registration, see section 1111 of this title.

Supplemental register, section inapplicable to trademarks on, see section 1094 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1094 of this title.

SUBCHAPTER II—THE SUPPLEMENTAL REGISTER

CROSS REFERENCES

Application of other sections of chapter to marks on supplemental register, see section 1094 of this title.

§ 1091. Marks registrable on supplemental register; application and proceedings for registration; nature of mark; mark used in foreign commerce

In addition to the principal register, the Commissioner shall keep a continuation of the register provided in paragraph (b) of section 1 of the Act of March 19, 1920, entitled "An Act to give effect to certain provisions of the convention for the protection of trade-marks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, and for other purposes", to be called the supplemental register. All marks capable of distinguishing applicant's goods or services and not registrable on the principal register provided in this chapter, except those declared to be unregistrable under subsections (a), (b), (c), and (d) of section 1052 of this title, which have been in lawful use in commerce by the proprietor thereof, upon or in connection with any goods or services for the year preceding the filing of the application may be registered on the supplemental register upon the payment of the prescribed fee and compliance with the provisions of section 1051 of this title so far as they are applicable.

Upon the filing of an application for registration on the supplemental register and payment of the fee herein provided the Commissioner shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and if on such examination it shall appear that the applicant is entitled to registration, the registration shall be granted. If the applicant is found not entitled to registration the provisions of subsection (b) of section 1062 of this title shall apply.

For the purposes of registration on the supplemental register, a mark may consist of any trademark, symbol, label, package, configuration of goods, name, word, slogan, phrase, surname, geographical name, numeral, or device or any combination of any of the foregoing, but such mark must be capable of distinguishing the applicant's goods or services.

Upon a proper showing by the applicant that he requires domestic registration as a basis for foreign protection of his mark, the Commissioner may waive the requirement of a full year's use and may grant registration forthwith.

(July 5, 1946, ch. 540, title II, § 23, 60 Stat. 435; Oct. 9, 1962, Pub. L. 87-772, § 13, 76 Stat. 773.)

REFERENCES IN TEXT

Paragraph (b) of section 1 of the Act of March 19, 1920, referred to in text, is paragraph (b) of section 1 of act Mar. 19, 1920, ch. 104, 41 Stat. 533, which was classified to section 121(b) of this title, and repealed by act July 5, 1946, ch. 540, § 46(a), 60 Stat. 444, insofar as inconsistent.

AMENDMENTS

1962—Pub. L. 87-772 deleted "has begun the lawful use of his mark in foreign commerce and that he" preceding "requires domestic registration" from the last paragraph.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Acts Mar. 19, 1920, ch. 104, § 1, 41 Stat. 533; Apr. 11, 1930, ch. 132, § 4, 46 Stat. 155; June 10, 1938, ch. 332, § 2, 52 Stat. 638.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1126 of this title.

§ 1092. Publication; not subject to opposition; cancellation

Marks for the supplemental register shall not be published for or be subject to opposition, but shall be published on registration in the Official Gazette of the Patent and Trademark Office. Whenever any person believes that he is or will be damaged by the registration of a mark on this register he may at any time, upon payment of the prescribed fee and the filing of a verified petition stating the ground therefor, apply to the Commissioner to cancel such registration. The Commissioner shall refer such application to the Trademark Trial and Appeal Board which shall give notice thereof to the registrant. If it is found after a hearing before the Board that the registrant was not entitled to register the mark at the time of his application for registration thereof, or that the mark is not used by the registrant or has been abandoned, the registration shall be canceled by the Commissioner.

(July 5, 1946, ch. 540, title II, § 24, 60 Stat. 436; Aug. 8, 1958, Pub. L. 85-609, § 1(d), 72 Stat. 540; Oct. 9, 1962, Pub. L. 87-772, § 14, 76 Stat. 773; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Pub. L. 87-772 provided for payment of the prescribed fee and the filing of a verified petition.

1958—Pub. L. 85-609 substituted provisions requiring the Commissioner to refer applications to the Trademark Trial and Appeal Board for provisions which required referral to the examiner in charge of interferences.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT; APPLICABILITY

For effective date of amendment by Pub. L. 85-609, and its applicability, see section 3 of Pub. L. 85-609, set out as a note under section 1067 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Reorganization Plan No. 5 of 1950

Amendment of section by Pub. L. 85-609 as subject to Reorganization Plan No. 5 of 1950, see note set out under section 1067 of this title.

Prior Provisions

Act Mar. 19, 1920, ch. 104, § 2, 41 Stat. 534.

§ 1093. Registration certificates for marks on principal and supplemental registers to be different

The certificates of registration for marks registered on the supplemental register shall be conspicuously different from certificates issued for marks registered on the principal register.

(July 5, 1946, ch. 540, title II, § 25, 60 Stat. 436.)

Repeal and Effect on Existing Rights

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

§ 1094. Provisions of chapter applicable to registrations on supplemental register

The provisions of this chapter shall govern so far as applicable applications for registration and registrations on the supplemental register as well as those on the principal register, but applications for and registrations on the supplemental register shall not be subject to or receive the advantages of sections 1052(e), 1052(f), 1057(b), 1062(a), 1063 to 1068, inclusive, 1072, 1115 and 1124 of this title.

(July 5, 1946, ch. 540, title II, § 26, 60 Stat. 436.)

Repeal and Effect on Existing Rights

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

Prior Provisions

Act Mar. 19, 1920, ch. 104, § 6, 41 Stat. 535.

§ 1095. Registration on principal register not precluded.

Registration of a mark on the supplemental register, or under the Act of March 19, 1920, shall not preclude registration by the registrant on the principal register established by this chapter.

(July 5, 1946, ch. 540, title II, § 27, 60 Stat. 436.)

References in Text

Act of March 19, 1920, referred to in text, is act Mar. 19, 1920, ch. 104, §§ 1 to 9, 41 Stat. 533, which had been generally classified to sections 121 to 128 of this title, and which had been repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, § 46(a), 60 Stat. 444.

Repeal and Effect on Existing Rights

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

§ 1096. Registration on supplemental register not used to stop importations

Registration on the supplemental register or under the Act of March 19, 1920, shall not be filed in the Department of the Treasury or be used to stop importations.

(July 5, 1946, ch. 540, title II, § 28, 60 Stat. 436.)

References in Text

Act of March 19, 1920, referred to in text, is act Mar. 19, 1920, ch. 104, §§ 1 to 9, 41 Stat. 533, which had been generally classified to sections 121 to 128 of this title, and which had been repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, § 46(b), 60 Stat. 444.

Repeal and Effect on Existing Rights

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

SUBCHAPTER III—GENERAL PROVISIONS

§ 1111. Notice of registration; display with mark; recovery of profits and damages in infringement suit

Notwithstanding the provisions of section 1072 of this title, a registrant of a mark registered in the Patent and Trademark Office, may give notice that his mark is registered by displaying with the mark as used the words "Registered in U.S. Patent and Trademark Office" or "Reg. U.S. Pat. & Tm. Off." or the letter R enclosed within a circle, thus ®; and in any suit for infringement under this chapter by such a registrant failing to give such notice of registration, no profits and no damages shall be recovered under the provisions of this chapter unless the defendant had actual notice of the registration.

(July 5, 1946, ch. 540, title III, § 29, 60 Stat. 436; Oct. 9, 1962, Pub. L. 87-772, § 15, 76 Stat. 773; Jan. 2, 1975, Pub. L. 93-596, §§ 1, 2, 88 Stat. 1949.)

Amendments

1975—Pub. L. 93-596 substituted "Patent and Trademark Office, may give notice that his mark is registered by displaying with the mark as used the words 'Registered in U.S. Patent and Trademark Office' or 'Reg. U.S. Pat. & Tm. Off.'" for "Patent Office, may give notice that his mark is registered by displaying with the mark as used the words 'Registered in U.S. Patent Office' or 'Reg. U.S. Pat. Off.'".

1962—Pub. L. 87-772 substituted "in the Patent Office, may" for "under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register established by this chapter, shall", and "to give such notice of registration," for "so to mark goods bearing the registered mark, or by a registrant under the Act of March 19, 1920, or by the registrant of a mark on the supplemental register provided by this chapter".

Effective Date of 1975 Amendment

Section 4 of Pub. L. 93-596 provided that: "This Act [amending this section and sections 1051, 1052, 1057, 1058, 1060, 1062, 1063, 1065, 1067, 1069, 1071, 1092, 1112, 1113, 1116 to 1120, 1123, and 1127 of this title, and sections 2 to 4, 6 to 8, 10, 11, 21 to 26, 31 to 33, 41, 104, 119, 121, 122, 135, 142 to 144, 146, 152, 153, 253 to 255, 261, 288, and 293 of Title 35, Patents, and enacting provisions set out as a note under section 1 of title 35] shall become effective upon enactment [Jan. 2, 1975]. However, any registrant may continue to give notice of his registration in accordance with section 29 of the Trademark Act of 1946 (60 Stat. 427), as amended Oct. 9, 1962 (76 Stat. 769) [this section], as an alternative to notice in accordance with section 29 of the Trademark Act as amended by section 2 of this Act, regardless of whether his mark was registered before or after the effective date of this Act."

Repeal and Effect on Existing Rights

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

Prior Provisions

Acts Feb. 20, 1905, ch. 592, § 28, 33 Stat. 730; Mar. 19, 1920, ch. 104, §§ 5, 6, 41 Stat. 534, 535.

Cross References

Registration as constructive notice of claim to ownership, see section 1072 of this title.

Section Referred to in Other Sections

This section is referred to in section 1117 of this title.

§ 1112. Classification of goods and services; registration in plurality of classes

The Commissioner may establish a classification of goods and services, for convenience of Patent and Trademark Office administration, but not to limit or extend the applicant's rights. The applicant may file an application to register a mark for any or all of the goods and services upon or in connection with which he is actually using the mark: *Provided,* That when such goods or services fall within a plurality of classes, a fee equaling the sum of the fees for filing an application in each class shall be paid, and the Commissioner may issue a single certificate of registration for such mark.

(July 5, 1946, ch. 540, title IV, § 30, 60 Stat. 436; Oct. 9, 1962, Pub. L. 87-772, § 16, 76 Stat. 773; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

Amendments

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Pub. L. 87-772, among other changes, substituted "may" for "shall".

Effective Date of 1975 Amendment

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

Repeal and Effect on Existing Rights

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Prior Provisions

Act May 4, 1906, ch. 2081, § 2, 34 Stat. 169.

§ 1113. Fees and charges

(a) Specific fees

The following fees shall be paid to the Patent and Trademark Office under this chapter:

1. On filing each original application for registration of a mark in each class, $35.

2. On filing each application for renewal in each class, $25; and on filing each application for renewal in each class after expiration of the registration, an additional fee of $5.

3. On filing an affidavit under section 1058(a) of this title or section 1058(b) of this title for each class, $10.

4. On filing each petition for the revival of an abandoned application, $15.

5. On filing opposition or application for cancellation for each class, $25.

6. On appeal from the examiner in charge of the registration of marks to the Trademark Trial and Appeal Board for each class, $25.

7. For issuance of a new certificate of registration following change of ownership of a mark or correction of a registrant's mistake, $15.

8. For certificate of correction of registrant's mistake or amendment after registration, $15.

9. For certifying in any case, $1.

10. For filing each disclaimer after registration, $15.

11. For printed copy of registered mark, 20 cents.

12. For recording every assignment, agreement, or other paper relating to the property in a registration or application, $20; where the document relates to more than one application or registration, $3 for each additional item.

13. On filing notice of claim of benefits of this chapter for a mark to be published under section 1062(c) of this title, $10.

(b) Charges for other services

The Commissioner may establish charges for copies of records, publications, or services furnished by the Patent and Trademark Office, not specified above.

(c) Refund of sums paid by mistake or in excess

The Commissioner may refund any sum paid by mistake or in excess.

(July 5, 1946, ch. 540, title V, § 31, 60 Stat. 437; Aug. 8, 1958, Pub. L. 85-609, § 1(e), 72 Stat. 540; July 24, 1965, Pub. L. 89-83, § 3, 79 Stat. 260; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

Amendments

1975—Subsec. (a). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (b). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1965—Pub. L. 89-83 increased the fees for filing an application for registration of a mark from $25 to $35; for issuance of a new certificate of registration following a change of ownership of a mark or correction of a registrant's mistake from $10 to $15; for a certificate of correction of registrant's mistake from $10 to $15; for filing a disclaimer from $10 to $15; and for recording an assignment, agreement, or other paper relating to the property in a registration or application from $3 for documents not exceeding six pages plus $1 for each additional two pages or less and 50 cents additional for each additional registration or application included in one writing, to a $20 fee for every document plus an additional fee of $3 for each additional item where the document relates to more than one application or registration; eliminated provisions which established fees for the surrender or cancellation of a registration, for an abstract of title, for a title report required for office use, for certificates that marks have not been registered, and for copies of various specified records and documents; added the fees for filing and affidavit under section 1058(a) or (b) of this title and for filing a petition for the revival of an abandoned application; empowered the Commissioner to establish charges for copies of records, publications or services furnished by the Patent Office; and made the provisions relating to refunds of sums paid by mistake permissive.

1958—Pub. L. 85-609 struck out "to the Commissioner" which followed "on appeal from an examiner in charge of the registration of marks", and provisions which required payment of a $25 fee on appeals from an examiner in charge of interferences to the Commissioner.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

For effective date and applicability of amendment by Pub. L. 89-83, see section 7(a), (d) of Pub. L. 89-83, set out as a note under section 41 of Title 35, Patents.

EFFECTIVE DATE OF 1958 AMENDMENT; APPLICABILITY

For effective date of amendment by Pub. L. 85-609, and its applicability, see section 3 of Pub. L. 85-609, set out as a note under section 1067 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

REORGANIZATION PLAN NO. 5 OF 1950

Amendment of section by Pub. L. 85-609 as subject to Reorganization Plan No. 5 of 1950, see note set out under section 1067 of this title.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§ 14, 15, 33 Stat. 728; Mar. 19, 1920, ch. 104, § 8, 41 Stat. 535; Apr. 11, 1930, ch. 132, § 4, 46 Stat. 155.

§ 1114. Remedies; infringement; innocent infringement by printers and publishers

(1) Any person who shall, without the consent of the registrant—

(a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

(b) reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive,

shall be liable in a civil action by the registrant for the remedies hereinafter provided. Under subsection (b) of this section, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

(2) Notwithstanding any other provision of this chapter, the remedies given to the owner of the right infringed shall be limited as follows: (a) Where an infringer in engaged solely in the business of printing the mark for others and establishes that he was an innocent infringer the owner of the right infringed shall be entitled as against such infringer only to an injunction against future printing; (b) where the infringement complained of is contained in or is part of paid advertising matter in a newspaper, magazine, or other similar periodical the remedies of the owner of the right infringed as against the publisher or distributor of such newspaper, magazine, or other similar periodical shall be confined to an injunction against the presentation of such advertising matter in future issues of such newspapers, magazines, or other similar periodical: *Provided,* That these limitations shall apply only to innocent infringers; (c) injunction relief shall not be available to the owner of the right infringed in respect of an issue of a newspaper, magazine, or other similar periodical containing infringing matter when restraining the dissemination of such infringing matter in any particular issue of such periodical would delay the delivery of such issue after the regular time therefor, and such delay would be due to the method by which publication and distribution of such periodical is customarily conducted in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such infringing matter.

(July 5, 1946, ch. 540, title VI, § 32, 60 Stat. 437; Oct. 9, 1962, Pub. L. 87-772, § 17, 76 Stat. 773.)

AMENDMENTS

1962—Subsec. (1). Pub. L. 87-772 amended subsection generally, and among other changes, inserted "distribution", and eliminated "purchasers as to the source of origin of such goods or services" following "or to deceive" in par. (a), inserted provisions regarding the likelihood of such use causing confusion, mistake, or deception, in par. (b), and eliminated the limitation on recovery under subsec. (b) of this section, to acts committed with knowledge that such acts would deceive purchasers.

Subsec. (2)(b). Pub. L. 87-772 substituted "publisher" for "published".

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

Prior Provisions

Acts Feb. 20, 1905, ch. 592, § 16, 33 Stat. 728; Mar. 19, 1920, ch. 104, § 4, 41 Stat. 534.

Cross References

Defenses to action for infringement, see section 1115 of this title.

Section Referred to in Other Sections

This section is referred to in section 1117 of this title.

§ 1115. Registration on principal register as evidence of exclusive right to use mark; defenses

(a) Any registration issued under the Act of March 3, 1881, or the Act of February 20, 1905, or of a mark registered on the principal register provided by this chapter and owned by a party to an action shall be admissible in evidence and shall be prima facie evidence of registrant's exclusive right to use the registered mark in commerce on the goods or services specified in the registration subject to any conditions or limitations stated therein, but shall not preclude an opposing party from proving any legal or equitable defense or defect which might have been asserted if such mark had not been registered.

(b) If the right to use the registered mark has become incontestable under section 1065 of this title, the registration shall be conclusive evidence of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the affidavit filed under the provisions of said section 1065 subject to any conditions or limitations stated therein except when one of the following defenses or defects is established:

(1) That the registration or the incontestable right to use the mark was obtained fraudulently; or

(2) That the mark has been abandoned by the registrant; or

(3) That the registered mark is being used by or with the permission of the registrant or a person in privity with the registrant, so as to misrepresent the source of the goods or services in connection with which the mark is used; or

(4) That the use of the name, term, or device charged to be an infringement is a use, otherwise than as a trade or service mark, of the party's individual name in his own business, or of the individual name of anyone in privity with such party, or of a term or device which is descriptive of and used fairly and in good faith only to describe to users the goods or services of such party, or their geographic origin; or

(5) That the mark whose use by a party is charged as an infringement was adopted without knowledge of the registrant's prior use and has been continuously used by such party or those in privity with him from a date prior to registration of the mark under this chapter or publication of the registered mark under subsection (c) of section 1062 of this title: *Provided, however,* That this defense or defect shall apply only for the area in which such continuous prior use is proved; or

(6) That the mark whose use is charged as an infringement was registered and used prior to the registration under this chapter or publication under subsection (c) of section 1062 of this title of the registered mark of the registrant, and not abandoned: *Provided, however,* That this defense or defect shall apply only for the area in which the mark was used prior to such registration or such publication of the registrant's mark; or

(7) That the mark has been or is being used to violate the antitrust laws of the United States.

(July 5, 1946, ch. 540, title VI, § 33, 60 Stat. 438; Oct. 9, 1962, Pub. L. 87-772, § 18, 76 Stat. 774.)

References in Text

Acts Mar. 3, 1881 and Feb. 20, 1905, referred to in subsec. (a), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, § 46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

The antitrust laws, referred to in subsec. (b)(7), are classified generally to chapter 1 (§ 1 et seq.) of this title.

Amendments

1962—Subsec. (a). Pub. L. 87-772 substituted "registration subject to" for "certificate subject to", and deleted "certificate of" preceding "registration issued".

Subsec. (b). Pub. L. 87-772 substituted "registration shall" for "certificate shall", and "affidavit filed under the provisions of said section 1065" for "certificate" in the text preceding par. (1), substituted "registrant or a person in privity with the registrant," for "assignee", and deleted "has been assigned and" following "registered mark" in par. (3), substituted "registration of the mark under this chapter or" for "the", and deleted "(a) or" preceding "(c) of section 1062" in par. (5), inserted "registration under this chapter", substituted "such registration or such" for "the date of", and deleted "(a) or" preceding "(c) of section 1062", "only where the said mark has been published pursuant to subsections (c) of section 1062 of this title and shall apply" following "defect shall apply", and "under subsection (a) or (c) of section 1062 of this title" following "registrant's mark", in par. (6).

Repeal and Effect on Existing Rights

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

Prior Provisions

Act Feb. 20, 1905, ch. 592, §§ 16, 21, 33 Stat. 728, 729.

Cross References

Abandonment of mark, definition of, see section 1127 of this title.

Supplemental register, section inapplicable to trademarks on, see section 1094 of this title.

Section Referred to in Other Sections

This section is referred to in section 1094 of this title.

§ 1116. Injunctions; enforcement; notice to Commissioner.

The several courts vested with jurisdiction of civil actions arising under this chapter shall have power to grant injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark registered in the Patent and Trademark Office. Any such injunction may include a provision directing the defendant to file with the court and serve on the plaintiff within thirty days after the service on the defendant of such injunction, or such extended period as the court may direct, a report in writing under oath setting forth in detail the manner and form in which the defendant has complied with the injunction. Any such injunction granted upon hearing, after notice to the defendant, by any district court of the United States, may be served on the parties against whom such injunction is granted anywhere in the United States where they may be found, and shall be operative and may be enforced by proceedings to punish for contempt, or otherwise, by the court by which such injunction was granted, or by any other United States district court in whose jurisdiction the defendant may be found.

The said courts shall have jurisdiction to enforce said injunction, as provided in this chapter, as fully as if the injunction had been granted by the district court in which it is sought to be enforced. The clerk of the court or judge granting the injunction shall, when required to do so by the court before which application to enforce said injunction is made, transfer without delay to said court a certified copy of all papers on file in his office upon which said injunction was granted.

It shall be the duty of the clerks of such courts within one month after the filing of any action, suit, or proceeding arising under the provisions of this chapter to give notice thereof in writing to the Commissioner setting forth in order so far as known the names and addresses of the litigants and the designating number or numbers of the registration or registrations upon which the action, suit, or proceeding has been brought, and in the event any other registration be subsequently included in the action, suit, or proceeding by amendment, answer, or other pleading, the clerk shall give like notice thereof to the Commissioner, and within one month after the decision is rendered, appeal taken or a decree issued the clerk of the court shall give notice thereof to the Commissioner, and it shall be the duty of the Commissioner on receipt of such notice forthwith to endorse the same upon the file wrapper of the said registration or registrations and to incorporate the same as a part of the contents of said file wrapper.

(July 5, 1946, ch. 540, title VI, § 34, 60 Stat. 439; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§ 19, 20, 33 Stat. 729; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1936, ch. 804, 49 Stat. 1921.

CROSS REFERENCES

Contempt proceedings, see sections 401, 402, 3285, 3691 and 3771 of Title 18, Crimes and Criminal Procedure.

Innocent infringement by publishers, injunction not to issue in certain cases, see section 1114 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

Judgment, see rule 54.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal contempt, see rule 42, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1117. Recovery for violation of rights; profits, damages and costs; attorney fees

When a violation of any right of the registrant of a mark registered in the Patent and Trademark Office shall have been established in any civil action arising under this chapter, the plaintiff shall be entitled, subject to the provisions of sections 1111 and 1114 of this title, and subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action. The court shall assess such profits and damages or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty. The court in exceptional cases may award reasonable attorney fees to the prevailing party.

(July 5, 1946, ch. 540, title VI, § 35, 60 Stat. 439; Oct. 9, 1962, Pub. L. 87-772, § 19, 76 Stat. 774; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949; Jan. 2, 1975, Pub. L. 93-600, § 3, 88 Stat. 1955.)

AMENDMENTS

1975—Pub. L. 93-600 added provisions relating to awarding of attorney fees in exceptional cases.

Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

1962—Pub. L. 87-772 substituted "1114" for "1113 (1)(b)".

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 93-600 effective on Jan. 2, 1975, but not affecting any suit, proceeding, or appeal then pending, see section 4 of Pub. L. 93-600, set out as a note under section 1063 of this title.

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§ 16, 19, 33 Stat. 728, 729; Mar. 19, 1920, ch. 104, § 4, 41 Stat. 534.

CROSS REFERENCES

Damages not recoverable on failure to give notice of registration, see section 1111 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Costs, provision for unaffected by rule 54, see note by Advisory Committee under rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

Judgment, see rule 54.

§ 1118. Destruction of infringing articles

In any action arising under this chapter, in which a violation of any right of the registrant of a mark registered in the Patent and Trademark Office shall have been established, the court may order that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of the defendant, bearing the registered mark or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same, shall be delivered up and destroyed.

(July 5, 1946, ch. 540, title VI, § 36, 60 Stat. 440; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, § 20, 33 Stat. 729; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1936, ch. 804, 49 Stat. 1921.

FEDERAL RULES OF CRIMINAL PROCEDURE

Application of section under rule 42, see note by Advisory Committee under rule 42, Title 18, Appendix, Crimes and Criminal Procedure.

§ 1119. Power of court over registration

In any action involving a registered mark the court may determine the right to registration, order the cancelation of registrations, in whole or in part, restore canceled registrations, and otherwise rectify the register with respect to the registrations of any party to the action. Decrees and orders shall be certified by the court to the Commissioner, who shall make appropriate entry upon the records of the Patent and Trademark Office, and shall be controlled thereby.

(July 5, 1946, ch. 540, title VI, § 37, 60 Stat. 440; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, § 22, 33 Stat. 729.

FEDERAL RULES OF CIVIL PROCEDURE

Judgment, see rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 1120. Civil liability for false or fraudulent registration

Any person who shall procure registration in the Patent and Trademark Office of a mark by a false or fraudulent declaration or representation, oral or in writing, or by any false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof.

(July 5, 1946, ch. 540, title VI, § 38, 60 Stat. 440; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

Effective Date of 1975 Amendment

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

Repeal and Effect on Existing Rights

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Prior Provisions

Act Feb. 20, 1905, ch. 592, § 25, 33 Stat. 730.

§ 1121. Jurisdiction of Federal courts

The district and territorial courts of the United States shall have original jurisdiction and the courts of appeal of the United States shall have appellate jurisdiction, of all actions arising under this chapter, without regard to the amount in controversy or to diversity or lack of diversity of the citizenship of the parties.

(July 5, 1946, ch. 540, title VI, § 39, 60 Stat. 440; June 25, 1948, ch. 646, §§ 1, 32(a), 62 Stat. 870, 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

Codification

The words "and the United States Court of Appeals for the District of Columbia" following "the Courts of Appeal of the United States" have been deleted as superfluous in view of section 41 of Title 28, Judiciary and Judicial Procedure, which includes the District of Columbia within the eleven judicial circuits of the United States. The word "and" has been inserted preceding "the courts of appeal of the United States" to preserve the conjunctive sense of the sentence.

Change of Name

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

Repeal and Effect on Existing Rights

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

Prior Provisions

Acts Feb. 20, 1905, ch. 592, § 17, 33 Stat. 728; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921.

Cross References

District courts vested with jurisdiction of—

Civil actions arising under any Act of Congress relating to trade-marks, see section 1338 of Title 28, Judiciary and Judicial Procedure.

Civil actions asserting a claim of unfair competition when joined with a substantial and related claim under the trade-mark laws, see section 1338 of Title 28, Judiciary and Judicial Procedure.

Civil actions for injunction against infringement of registered trade-mark, see section 1116 of this title.

District in which trade-mark infringement action to be brought, see section 1391 of Title 28, Judiciary and Judicial Procedure.

§ 1122. Repealed. May 24, 1949, ch. 139, § 142, 63 Stat. 109

Section, act July 5, 1946, ch. 540, title VI, § 40, 60 Stat. 440, related to review of cases by the Supreme Court, and is now covered by section 1254 of Title 28, Judiciary and Judicial Procedure.

§ 1123. Rules and regulations for conduct of proceedings in Patent and Trademark Office

The Commissioner shall make rules and regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office under this chapter.

(July 5, 1946, ch. 540, title VI, § 41, 60 Stat. 440; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

Amendments

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

Effective Date of 1975 Amendment

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

Repeal and Effect on Existing Rights

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5, of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Prior Provisions

Act Feb. 20, 1905, ch. 592, § 26, 33 Stat. 730.

§ 1124. Importation of goods bearing infringing marks or names forbidden

No article of imported merchandise which shall copy or simulate the name of the [1] any domestic manufacture, or manufacturer, or trader, or of any manufacturer or trader located in any foreign country, which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trade-mark registered in accordance with the provisions of this chapter or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any customhouse of the United States; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled under the provisions of a treaty, convention, declaration, or agreement between the United States and any foreign country to the advantages afforded by law to citizens of the United States in respect to trade-marks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trade-mark issued in accordance with the provisions of this chapter, to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department facsimiles of his name, the name of the locality in which his goods are manufactured, or of his registered trade-mark, and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs.

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[1] So in original.

(July 5, 1946, ch. 540, title VII, § 42, 60 Stat. 440.)

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise of the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to title 5.

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, § 27, 33 Stat. 730.

CROSS REFERENCES

Importation of foreign goods bearing trade-mark owned and registered in United States prohibited, see section 1526 of Title 19, Customs Duties.

Supplemental register, section inapplicable to trademarks on, see section 1094 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1094 of this title; title 48 section 1643.

§ 1125. False designations of origin and false descriptions forbidden

(a) Any person who shall affix, apply, or annex, or use in connection with any goods or services, or any container or containers for goods, a false designation of origin, or any false description or representation, including words or other symbols tending falsely to describe or represent the same, and shall cause such goods or services to enter into commerce, and any person who shall with knowledge of the falsity of such designation of origin or description or representation cause or procure the same to be transported or used in commerce or deliver the same to any carrier to be transported or used, shall be liable to a civil action by any person doing business in the locality falsely indicated as that of origin or in the region in which said locality is situated, or by any person who believes that he is or is likely to be damaged by the use of any such false description or representation.

(b) Any goods marked or labeled in contravention of the provisions of this section shall not be imported into the United States or admitted to entry at any customhouse of the United States. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse by protest or appeal that is given under the customs revenue laws or may have the remedy given by this chapter in cases involving goods refused entry or seized.

(July 5, 1946, ch. 540, title VIII, § 43, 60 Stat. 441.)

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

PRIOR PROVISIONS

Act Mar. 19, 1920, ch. 104, § 3, 41 Stat. 534.

CROSS REFERENCES

Jurisdiction of protests and appeals under customs law, see sections 1582 and 1583 of Title 28, Judiciary and Judicial Procedure.

Protest against decision of collector of customs, see section 1514 of Title 19, Customs Duties.

§ 1126. International conventions

(a) Register of marks communicated by international bureaus

The Commissioner shall keep a register of all marks communicated to him by the international bureaus provided for by the conventions for the protection of industrial property, trademarks, trade and commercial names, and the repression of unfair competition to which the United States is or may become a party, and upon the payment of the fees required by such conventions and the fees herein prescribed may place the marks so communicated upon such register. This register shall show a facsimile of the mark or trade or commercial name; the name, citizenship, and address of the registrant; the number, date, and place of the first registration of the mark, including the dates on which application for such registration was filed and granted and the term of such registration; a list of goods or services to which the mark is applied as shown by the registration in the country of origin, and such other data as may be useful concerning the mark. This register shall be a continuation of the register provided in section 1(a) of the Act of March 19, 1920.

(b) Benefits of section to persons whose country of origin is party to convention or treaty

Any person whose country of origin is a party to any convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition, to which the United States is also a party, or extends reciprocal rights to nationals of the United States by law, shall be entitled to the benefits of this section under the conditions expressed herein to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of a mark is otherwise entitled by this chapter.

(c) Prior registration in country of origin; country of origin defined

No registration of a mark in the United States by a person described in subsection (b) of this section shall be granted until such mark has been registered in the country of origin of the applicant, unless the applicant alleges use in commerce.

For the purposes of this section, the country of origin of the applicant is the country in which he has a bona fide and effective industrial or commercial establishment, or if he has not such an establishment the country in which he is domiciled, or if he has not a domicile in any of the countries described in subsection (b) of this section, the country of which he is a national.

(d) Right of priority

An application for registration of a mark under sections 1051, 1052, 1053, 1054 or 1091 of this title, filed by a person described in subsection (b) of this section who has previously duly filed an application for registration of the same mark in one of the countries described in subsection (b) of this section shall be accorded the same force and effect as would be accorded to the same application if filed in the United States on the same date on which the application was first filed in such foreign country: *Provided,* That—

(1) the application in the United States is filed within six months from the date on which the application was first filed in the foreign country;

(2) the application conforms as nearly as practicable to the requirements of this chapter, but use in commerce need not be alleged;

(3) the rights acquired by third parties before the date of the filing of the first application in the foreing[1] country shall in no way be affected by a registration obtained on an application filed under this subsection;

(4) nothing in this subsection shall entitle the owner of a registration granted under this section to sue for acts committed prior to the date on which his mark was registered in this country unless the registration is based on use in commerce.

In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country, instead of the first filed foreign application: *Provided,* That any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve as a basis for claiming a right of priority.

(e) Registration on principal or supplemental register; copy of foreign registration

A mark duly registered in the country of origin of the foreign applicant may be registered on the principal register if eligible, otherwise on the supplemental register in this chapter provided. The application therefor shall be accompanied by a certification or a certified copy of the registration in the country of origin of the applicant.

(f) Domestic registration independent of foreign registration

The registration of a mark under the provisions of subsections (c), (d), and (e) of this section by a person described in subsection (b) of this section shall be independent of the registration in the country of origin and the duration, validity, or transfer in the United States of such registration shall be governed by the provisions of this chapter.

(g) Trade or commercial names of foreign nationals protected without registration

Trade names or commercial names of persons described in subsection (b) of this section shall be protected without the obligation of filing or registration whether or not they form parts of marks.

(h) Protection of foreign nationals against unfair competition

Any person designated in subsection (b) of this section as entitled to the benefits and subject to the provisions of this chapter shall be entitled to effective protection against unfair competition, and the remedies provided in this chapter for infringement of marks shall be available so far as they may be appropriate in repressing acts of unfair competition.

(i) Citizens or residents of United States entitled to benefits of section

Citizens or residents of the United States shall have the same benefits as are granted by this section to persons described in subsection (b) of this section.

(July 5, 1946, ch. 540, title IX, § 44, 60 Stat. 441; Oct. 3, 1961, Pub. L. 87-333, § 2, 75 Stat. 748; Oct. 9, 1962, Pub. L. 87-772, § 20, 76 Stat. 774.)

REFERENCES IN TEXT

Section 1(a) of the Act of March 19, 1920, referred to in subsec. (a), is section 1(a) of act Mar. 19, 1920, ch. 104, 41 Stat. 533, which was classified to section 121(a) of this title, and repealed by act July 5, 1946, ch. 540, § 46(a), 60 Stat. 444, insofar as inconsistent with this chapter.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87-772 inserted "or extends reciprocal rights to nationals of the United States by law," and substituted provisions requiring the person's country of origin to be a party to any convention or treaty, for provisions which required such persons to be nationals of, domiciled in, or have a bona fide and effective business or commercial establishment in a foreign country which was a party to the International Convention for the Protection of Industrial Property, or the General Inter-American Convention for Trade Mark and Commercial Protection, or any other convention or treaty relating to trademarks, trade, or commercial names.

Subsec. (e). Pub. L. 87-772 inserted "certification or a" following "accompanied by a" and eliminated "application for or" preceding "registration".

1961—Subsec. (d). Pub. L. 87-333 authorized the right provided by this section to be based upon a subsequent application in the same foreign country, instead of the first application, provided that any foreign application filed prior to such subsequent one was withdrawn, or otherwise disposed of, without having been open to public inspection and without leaving any rights outstanding, nor any basis for claiming priority.

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[1] So in original. Probably should read "foreign".

Effective Date of 1961 Amendment

Section 3 of Pub. L. 87-333 provided that: "This Act [amending this section and section 119 of Title 35, Patents] shall take effect on the date when the Convention of Paris for the Protection of Industrial Property of March 20, 1883, as revised at Lisbon, October 31, 1958, comes into force with respect to the United States and shall apply only to applications thereafter filed in the United States by persons entitled to the benefit of said convention, as revised at the time of such filing."

Repeal and Effect on Existing Rights

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Prior Provisions

Acts Feb. 20, 1905, ch. 592, §§ 1, 2, 4, 33 Stat. 724, 725; May 4, 1906, ch. 2081, §§ 1, 3, 34 Stat. 168, 169; Feb. 18, 1909, ch. 144, 35 Stat. 628; Mar. 19, 1920, ch. 104, §§ 1, 6, 41 Stat. 533, 535; Apr. 11, 1930, ch. 132, § 4, 46 Stat. 155; June 20, 1936, ch. 617, 49 Stat. 1539; June 10, 1938, ch. 332, §§ 1, 2, 3, 52 Stat. 638, 639.

§ 1127. Construction and definitions; intent of chapter

In the construction of this chapter, unless the contrary is plainly apparent from the context—

The United States includes and embraces all territory which is under its jurisdiction and control.

The word "commerce" means all commerce which may lawfully be regulated by Congress.

The term "principal register" refers to the register provided for by sections 1051 to 1072 of this title, and the term "supplemental register" refers to the register provided for by sections 1091 to 1096 of this title.

The term "person" and any other word or term used to designate the applicant or other entitled to a benefit or privilege or rendered liable under the provisions of this chapter includes a juristic person as well as a natural person. The term "juristic person" includes a firm, corporation, union, association, or other organization capable of suing and being sued in a court of law.

The terms "applicant" and "registrant" embrace the legal representatives, predecessors, successors and assigns of such applicant or registrant.

The term "Commissioner" means the Commissioner of Patents and Trademarks.

The term "related company" means any person who legitimately controls or is controlled by the registrant or applicant for registration in respect to the nature and quality of the goods or services in connection with which the mark is used.

The terms "trade name" and "commercial name" include individual names and surnames, firm names and trade names used by manufacturers, industrialists, merchants, agriculturists, and others to identify their businesses, vocations, or occupations; the names or titles lawfully adopted and used by persons, firms, associations, corporations, companies, unions, and any manufacturing, industrial, commercial, agricultural, or other organizations engaged in trade or commerce and capable of suing and being sued in a court of law.

The term "trade-mark" includes any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others.

The term "service mark" means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others. Titles, character names and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

The term "certification mark" means a mark used upon or in connection with the products or services of one or more persons other than the owner of the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy or other characteristics of such goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

The term "collective mark" means a trademark or service mark used by the members of a cooperative, an association or other collective group or organization and includes marks used to indicate membership in a union, an association or other organization.

The term "mark" includes any trade-mark, service mark, collective mark, or certification mark entitled to registration under this chapter whether registered or not.

For the purposes of this chapter a mark shall be deemed to be used in commerce (a) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and the goods are sold or transported in commerce and (b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in this and a foreign country and the person rendering the services is engaged in commerce in connection therewith.

A mark shall be deemed to be "abandoned"—

(a) When its use has been discontinued with intent not to resume. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall be prima facie abandonment.

(b) When any course of conduct of the registrant, including acts of omission as well as commission, causes the mark to lose its significance as an indication of origin.

The term "colorable imitation" includes any mark which so resembles a registered mark as to be likely to cause confusion or mistake or to deceive.

The term "registered mark" means a mark registered in the United States Patent and

Trademark Office under this chapter or under the Act of March 3, 1881, or the Act of February 20, 1905, or the Act of March 19, 1920. The phrase "marks registered in the Patent and Trademark Office" means registered marks.

The term "Act of March 3, 1881", "Act of February 20, 1905", or "Act of March 19, 1920", means the respective Act as amended.

A "counterfeit" is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark.

Words used in the singular include the plural and vice versa.

The intent of this chapter is to regulate commerce within the control of Congress by making actionable the deceptive and misleading use of marks in such commerce; to protect registered marks used in such commerce from interference by State, or territorial legislation; to protect persons engaged in such commerce against unfair competition; to prevent fraud and deception in such commerce by the use of reproductions, copies, counterfeits, or colorable imitations of registered marks; and to provide rights and remedies stipulated by treaties and conventions respecting trade-marks, trade names, and unfair competition entered into between the United States and foreign nations.

(July 5, 1946, ch. 540, title X, § 45, 60 Stat. 443; Oct. 9, 1962, Pub. L. 87-772, § 21, 76 Stat. 774; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949.)

REFERENCES IN TEXT

Acts March 3, 1881, February 20, 1905, and March 19, 1920, referred to in text, are acts Mar. 3, 1881, ch. 138, 21 Stat. 502; Feb. 20, 1905, ch. 592, 33 Stat. 724; and Mar. 19, 1920, ch. 104, 41 Stat. 533, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, § 46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title. Act Mar. 19, 1920, had been generally classified to sections 121 to 128 of this title.

AMENDMENTS

1975—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in two places and "Commissioner of Patents and Trademarks" for "Commissioner of Patents" in the definition of "Commissioner".

1962—Pub. L. 87-772 substituted, "predecessors," for "and" in the definition of "applicant" and "registrant", "Titles, character names and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor" for "and includes without limitation the marks, names, symbols, titles, designations, slogans, character names, and distinctive features of radio or other advertising used in commerce", in the definition of "service mark", inserted "or the services are rendered in more than one State or in this and a foreign country and the person rendering the services is engaged in commerce in connection therewith" in the fifteenth paragraph relating to use in commerce, eliminated "purchasers" following "deceive" in the definition of "colorable imitation", and substituted "commerce" for "commence" in the last paragraph relating to the intent of the chapter.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, § 29, 33 Stat. 731; June 10, 1938, ch. 332, § 5, 52 Stat. 639.

CHAPTER 23—DISSEMINATION OF TECHNICAL, SCIENTIFIC AND ENGINEERING INFORMATION

Sec.
1151. Purpose of chapter.
1152. Clearinghouse for technical information; removal of security classification.
1153. Rules, regulations, and fees.
1153a. Repealed.
1154. Reference of data to armed services and other government agencies.
1155. General standards and limitations; preservation of security classification.
1156. Use of existing facilities.
1157. Relation to other provisions.

§ 1151. Purpose of chapter

The purpose of this chapter is to make the results of technological research and development more readily available to industry and business, and to the general public, by clarifying and defining the functions and responsibilities of the Department of Commerce as a central clearinghouse for technical information which is useful to American industry and business.

(Sept. 9, 1950, ch. 936, § 1, 64 Stat. 823.)

§ 1152. Clearinghouse for technical information; removal of security classification

The Secretary of Commerce (hereinafter referred to as the "Secretary") is directed to establish and maintain within the Department of Commerce a clearinghouse for the collection and dissemination of scientific, technical, and engineering information, and to this end to take such steps as he may deem necessary and desirable—

(a) to search for, collect, classify, coordinate, integrate, record, and catalog such information from whatever sources, foreign and domestic, that may be available;

(b) To make such information available to industry and business, to State and local governments, to other agencies of the Federal Government, and to the general public, through the preparation of abstracts, digests, translations, bibliographies, indexes, and microfilm and other reproductions, for distribution either directly or by utilization of business, trade, technical, and scientific publications and services;

(c) To effect, within the limits of his authority as now or hereafter defined by law, and with the consent of competent authority, the removal of restrictions on the dissemination of scientific and technical data in cases where consideration of national security permit the release of such data for the benefit of industry and business.

(Sept. 9, 1950, ch. 936, § 2, 64 Stat. 823.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1525 of this title.

§ 1153. Rules, regulations, and fees

The Secretary is authorized to make, amend, and rescind such orders, rules, and regulations as he may deem necessary to carry out the provisions of this chapter, and to establish, from time to time, a schedule or schedules of reasonable fees or charges for services performed or for documents or other publications furnished under this chapter.

It is the policy of this chapter, to the fullest extent feasible and consistent with the objectives of this chapter, that each of the services and functions provided herein shall be self-sustaining or self-liquidating and that the general public shall not bear the cost of publications and other services which are for the special use and benefit of private groups and individuals; but nothing herein shall be construed to require the levying of fees or charges for services performed or publications furnished to any agency or instrumentality of the Federal Government, or for publications which are distributed pursuant to reciprocal arrangements for the exchange of information or which are otherwise issued primarily for the general benefit of the public.

(Sept. 9, 1950, ch. 936, § 3, 64 Stat. 823; Sept. 25, 1970, Pub. L. 91-412, § 3(e), 84 Stat. 864.)

AMENDMENTS

1970—Pub. L. 91-412 deleted provisos of first par. for deposit of moneys received for services and publications after Sept. 9, 1950, in a special account in the Treasury, to be available, subject to appropriation authorizations, for reimbursement of appropriations and for refunds to organizations and individuals entitled thereto, and making appropriations reimbursed by the special account available for original purposes, now covered in section 1526 of this title.

CROSS REFERENCES

Moneys received for publications, use of, see section 1526 of this title.

§ 1153a. Repealed. Pub. L. 91-412, § 3(f), Sept. 25, 1970, 84 Stat. 865

Section, act Oct. 22, 1951, ch. 533, title III, § 301, 65 Stat. 586, which provided for reimbusement of appropriations, is now covered by section 1526 of this title.

§ 1154. Reference of data to armed services and other government agencies

The Secretary is directed to refer to the armed services all scientific or technical information, coming to his attention, which he deems to have an immediate or potential practical military value or significance, and to refer to the heads of other Government agencies such scientific or technical information as relates to activities within the primary responsibility of such agencies.

(Sept. 9, 1950, ch. 936, § 4, 64 Stat. 824.)

§ 1155. General standards and limitations; preservation of security classification

Notwithstanding any other provision of this chapter, the Secretary shall respect and preserve the security classification of any scientific or technical information, data, patents, inventions, or discoveries in, or coming into, the possession or control of the Department of Commerce, the classified status of which the President or his designee or designees certify as being essential in the interest of national defense, and nothing in this chapter shall be construed as modifying or limiting any other statute relating to the classification of information for reasons of national defense or security.

(Sept. 9, 1950, ch. 936, § 5, 64 Stat. 824.)

§ 1156. Use of existing facilities

(a) The Secretary may utilize any personnel, facilities, bureaus, agencies, boards, administrations, offices, or other instrumentalities of the Department of Commerce which he may require to carry out the purposes of this chapter.

(b) The Secretary is authorized to call upon other departments and independent establishments and agencies of the Government to provide, with their consent, such available services, facilities, or other cooperation as he shall deem necessary or helpful in carrying out the provisions of this chapter, and he is directed to utilize existing facilities to the full extent deemed feasible.

(Sept. 9, 1950, ch. 936, § 6, 64 Stat. 824.)

§ 1157. Relation to other provisions

Nothing in this chapter shall be construed to repeal or amend any other legislation pertaining to the Department of Commerce or its component offices or bureaus.

(Sept. 9, 1950, ch. 936, § 7, 64 Stat. 824.)

CHAPTER 24—TRANSPORTATION OF GAMBLING DEVICES

Sec.
1171. Definitions.
1172. Transportation of gambling devices as unlawful; exceptions; authority of Federal Trade Commission.
1173. Registration of manufacturers and dealers.
  (a) Activities requiring registration; contents of registration statement.
  (b) Numbering of devices.
  (c) Records; required information.
  (d) Retention of records.
  (e) Dealing in, owning, possessing or having custody of devices not marked or numbered; false entries in records.
  (f) Authority of Federal Bureau of Investigation.
1174. Labeling and marking of shipping packages.
1175. Specific jurisdictions within which manufacturing, repairing, selling, possessing, etc., prohibited.
1176. Penalties.
1177. Confiscation of gambling devices and means of transportation; laws governing.
1178. Nonapplicability of chapter to certain machines and devices.

§ 1171. Definitions

As used in this chapter—

(a) The term "gambling device" means—

(1) any so-called "slot machine" or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.

(b) The term "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(c) The term "possession of the United States" means any possession of the United States which is not named in subsection (b) of this section.

(d) The term "interstate or foreign commerce" means commerce (1) between any State or possession of the United States and any place outside of such State or possession, or (2) between points in the same State or possession of the United States but through any place outside thereof.

(e) The term "intrastate commerce" means commerce wholly within one State or possession of the United States.

(Jan. 2, 1951, ch. 1194, § 1, 64 Stat. 1134; Oct. 18, 1962, Pub. L. 87-840, §§ 2, 3, 76 Stat. 1075.)

AMENDMENTS

1962—Subsecs. (a)(2), (3). Pub. L. 87-840, § 2, substituted provisions including machines and mechanical devices designed and manufactured primarily for gambling by the operation of which a person may become entitled to receive, as the result of chance, any money or property, for provisions which included machines or mechanical devices designed and manufactured to operate by inserting a coin, token, or similar object, in par. (2), and inserted ", but which is not attached to any such machine or mechanical device as a constituent part", in par. (3).

Subsec. (b). Pub. L. 87-840, § 3, substituted "the District of Columbia" for "Alaska, Hawaii".

Subsecs. (d) and (e). Pub. L. 87-840, § 3, added subsecs. (d) and (e).

EFFECTIVE DATE OF 1962 AMENDMENT

Section 7 of Pub. L. 87-840 provided that: "The amendments made by this Act [enacting section 1178 of this title and amending this section and sections 1172 and 1173 of this title] shall take effect on the sixtieth day after the date of its enactment [Oct. 18, 1962]."

SHORT TITLE

Section 1 of Pub. L. 87-840 provided that Pub. L. 87-840, which enacted section 1178 of this title, and amended this section and sections 1172 and 1173 of this title, may be cited as the "Gambling Devices Act of 1962."

SEPARABILITY OF PROVISIONS

Section 8 of act Jan. 2, 1951, provided that: "If any provision of this Act [this chapter] or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act [this chapter] which can be given effect without the invalid provision or application, and to this end the provisions of this Act [this chapter] are declared to be severable."

CROSS REFERENCES

Numbering of gambling devices, see section 1173 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1173 of this title.

§ 1172. Transportation of gambling devices as unlawful; exceptions; authority of Federal Trade Commission

It shall be unlawful knowingly to transport any gambling device to any place in a State, the District of Columbia, or a possession of the United States from any place outside of such State, the District of Columbia, or possession: *Provided*, That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section, nor shall this section apply to any gambling device used or designed for use at and transported to licensed gambling establishments where betting is legal under applicable State laws: *Provided, further*, That it shall not be unlawful to transport in interstate or foreign commerce any gambling device into any State in which the transported gambling device is specifically enumerated as lawful in a statute of that State.

Nothing in this chapter shall be construed to interfere with or reduce the authority, or the existing interpretation of the authority, of the Federal Trade Commission under the Federal Trade Commission Act. [15 U.S.C. 41 et. seq.].

(Jan. 2, 1951, ch. 1194, § 2, 64 Stat. 1134; Oct. 18, 1962, Pub. L. 87-840, § 4, 76 Stat. 1075.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see Tables volume.

AMENDMENTS

1962—Pub. L. 87-840 excepted gambling devices used or designed for use at and transported to licensed gambling establishments where betting is legal under State laws, and provided that it shall not be unlawful to transport such devices into any State in which the device is specifically enumerated as lawful in a State statute.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment effective on the sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87-840, set out as a note under section 1171 of this title.

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1176 of this title.

§ 1173. Registration of manufacturers and dealers

(a) Activities requiring registration; contents of registration statement

(1) It shall be unlawful for any person engaged in the business of manufacturing gambling devices, if the activities of such business in any way affect interstate or foreign commerce, to manufacture any gambling device during any calendar year, unless, after November 30 of the preceding calendar year, and before the date on which such device is manufactured, such person has registered with the Attorney General under this subsection, regardless of whether such device ever enters interstate or foreign commerce.

(2) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he sells, ships, or delivers any such device knowing that it will be introduced into interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year, and before the date such sale, shipment, or delivery occurs, such person has registered with the Attorney General under this subsection.

(3) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30, of the preceding calendar year and before the date on which he buys or receives such device, such person has registered with the Attorney General under this subsection.

(4) Each person who registers with the Attorney General pursuant to this subsection shall set forth in such registration (A) his name and each trade name under which he does business, (B) the address of each of his places of business in any State or possession of the United States, (C) the address of a place, in a State or possession of the United States in which such a place of business is located, where he will keep all records required to be kept by him by subsection (c) of this section, and (D) each activity described in paragraph (1), (2), or (3) of this subsection which he intends to engage in during the calendar year with respect to which such registration is made.

(b) Numbering of devices

(1) Every manufacturer of a gambling device defined in paragraph (a)(1) or (a)(2) of section 1171 of this title shall number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

(2) Every manufacturer of a gambling device defined in paragraph (a)(3) of section 1171 of this title shall, if the size of such device permits it, number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

(c) Records; required information

(1) Every person required to register under subsection (a) of this section for any calendar year shall, on and after the date of such registration or the first day of such year (whichever last occurs), maintain a record by calendar month for all periods thereafter in such year of—

(A) each gambling device manufactured, purchased, or otherwise acquired by him,

(B) each gambling device owned or possessed by him or in his custody, and

(C) each gambling device sold, delivered, or shipped by him in intrastate, interstate, or foreign commerce.

(2) Such record shall show—

(A) in the case of each such gambling device defined in paragraph (a)(1) or (a)(2) of section 1171 of this title, the information which is required to be affixed on such gambling device by subsection (b) (1) of this section; and

(B) in the case of each such gambling device defined in paragraph (a)(3) of section 1171 of this title, the information required to be affixed on such gambling device by subsection (b)(2) of this section, or, if such gambling device does not have affixed on it any such information, its catalog listing, description, and, in the case of each such device owned or possessed by him or in his custody, its location.

Such record shall also show (i) in the case of any such gambling device described in paragraph (1)(A) of this subsection, the name and address of the person from whom such device was purchased or acquired and the name and address of the carrier; and (ii) in the case of any such gambling device described in paragraph (1)(C) of this subsection, the name and address of the buyer and consignee thereof and the name and address of the carrier.

(d) Retention of records

Each record required to be maintained under this section shall be kept by the person required to make it at the place designated by him pursuant to subsection (a)(4)(C) of this section for a period of at least five years from the last day of the calendar month of the year with respect to which such record is required to be maintained.

(e) Dealing in, owning, possessing, or having custody of devices not marked or numbered; false entries in records

(1) It shall be unlawful (A) for any person during any period in which he is required to be registered under subsection (a) of this section to sell, deliver, or ship in intrastate, interstate, or foreign commerce or own, possess, or have in his custody any gambling device which is not marked and numbered as required by subsection (b) of this section; or (B) for any person to remove, obliterate, or alter any mark or number on any gambling device required to be placed thereon by such subsection (b).

(2) It shall be unlawful for any person knowingly to make or cause to be made, any false entry in any record required to be kept under this section.

(f) Authority of Federal Bureau of Investigation

Agents of the Federal Bureau of Investigation shall, at any place designated pursuant to subsection (a)(4)(C) of this section by any person required to register by subsection (a) of this section, at all reasonable times, have access to and the right to copy any of the records required to be kept by this section, and, in case of refusal by any person registered under such subsection (a) to allow inspection and copying of such records, the United States district court for the district in which such place is located shall have jurisdiction to issue an order compelling production of such records for inspection or copying.

(Jan. 2, 1951, ch. 1194, § 3, 64 Stat. 1135; Oct. 18, 1962, Pub. L. 87-840, § 5, 76 Stat. 1075.)

REFERENCES IN TEXT

The effective date of the Gambling Devices Act of 1962, referred to in pars. (2) and (3) of subsec. (a), is the effective date of Pub. L. 87-840, which is the sixtieth day after Oct. 18, 1962. See Effective Date of 1962 Amendment note set out under section 1171 of this title.

AMENDMENTS

1962—Pub. L. 87-840 amended section generally. Prior to such amendment, section provided that: "Upon first engaging in business, and therafter on or before the 1st day of July of each year, every manufacturer of and dealer in gambling devices shall register with the Attorney General his name or trade name, the address of his principal place of business, and the addresses of his places of business in such district. On or before the last day of each month every manufacturer of and dealer in gambling devices shall file with the Attorney General an inventory and record of all sales and deliveries of gambling devices as of the close of the preceding calendar month for the place or places of business in the district. The monthly record of sales and deliveries of such gambling devices shall show the mark and number identifying each article together with the name and address of the buyer or consignee thereof and the name and address of the carrier. Duplicate bills or invoices, if complete in the foregoing respects, may be used in filing the record of sales and deliveries. For the purposes of this chapter, every manufacturer or dealer shall mark and number each gambling device, so that it is individually identifiable. In cases of sale, delivery, or shipment of gambling devices in unassembled form, the manufacturer or dealer shall separately mark and number the components of each gambling device with a common mark and number as if it were an assembled gambling device. It shall be unlawful for any manufacturer or dealer to sell, deliver, or ship any gambling device which is not marked and numbered for identification as herein provided; and it shall be unlawful for any manufacturer or dealer to manufacture, recondition, repair, sell, deliver, or ship any gambling device without having registered as required by this section, or without filing monthly the required inventories and records of sales and deliveries."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment effective on the sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87-840, set out as a note under section 1171 of this title.

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1176 of this title.

§ 1174. Labeling and marking of shipping packages

All gambling devices, and all packages containing any such, when shipped or transported shall be plainly and clearly labeled or marked so that the name and address of the shipper and of the consignee, and the nature of the article or the contents of the package may be readily ascertained on an inspection of the outside of the article or package.

(Jan. 2, 1951, ch. 1194, § 4, 64 Stat. 1135.)

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1176 of this title.

§ 1175. Specific jurisdictions within which manufacturing, repairing, selling, possessing, etc., prohibited

It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device in the District of Columbia, in any possession of the United States, within Indian country as defined in section 1151 of title 18 or within the special maritime and territorial jurisdiction of the United States as defined in section 7 of title 18.

(Jan. 2, 1951, ch. 1194, § 5, 64 Stat. 1135.)

CROSS REFERENCES

Penalty for violations, see section 1176 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1176 of this title.

§ 1176. Penalties

Whoever violates any of the provisions of sections 1172, 1173, 1174, or 1175 of this title shall be fined not more than $5,000 or imprisoned not more than two years, or both.

(Jan. 2, 1951, ch. 1194, § 6, 64 Stat. 1135.)

§ 1177. Confiscation of gambling devices and means of transportation; laws governing

Any gambling device transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in violation of the provisions of this chapter shall be seized and forfeited to the United

States. All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as applicable and not inconsistent with the provisions hereof: *Provided*, That such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of gambling devices under this chapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

(Jan. 2, 1951, ch. 1194, § 7, 64 Stat. 1135.)

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to title 5.

§ 1178. Nonapplicability of chapter to certain machines and devices

None of the provisions of this chapter shall be construed to apply—

(1) to any machine or mechanical device designed and manufactured primarily for use at a racetrack in connection with parimutuel betting,

(2) to any machine or mechanical device, such as a coin-operated bowling alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (A) which when operated does not deliver, as a result of the application of an element of chance, any money or property, or (B) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money or property, or

(3) to any so-called claw, crane, or digger machine and similar devices which are not operated by coin, are actuated by a crank, and are designed and manufactured primarily for use at carnivals or county or State fairs.

(Jan. 2, 1951, ch. 1194, § 9, as added Oct. 18, 1962, Pub. L. 87-840, § 6, 76 Stat. 1077.)

EFFECTIVE DATE

Section effective on the sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87-840, set out as a note under section 1171 of this title.

CHAPTER 25—FLAMMABLE FABRICS

Sec.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2056, 2079 of this title.

§ 1191. Definitions

As used in this chapter—

(a) The term "person" means an individual, partnership, corporation, association, or any other form of business enterprise.

(b) The term "commerce" means commerce among the several States or with foreign nations or in any territory of the United States or in the District of Columbia or between any such territory and another, or between any such territory and any State or foreign nation, or between the District of Columbia or the Commonwealth of Puerto Rico and any State or territory or foreign nation, or between the Commonwealth of Puerto Rico and any State or territory or foreign nation or the District of Columbia.

(c) The term "territory" includes the insular possessions of the United States and also any territory of the United States.

(d) The term "article of wearing apparel" means any costume or article of clothing worn or intended to be worn by individuals.

(e) The term "interior furnishing" means any type of furnishing made in whole or in part of fabric or related material and intended for use or which may reasonably be expected to be used, in homes, offices, or other places of assembly or accommodation.

(f) The term "fabric" means any material (except fiber, filament, or yarn for other than retail sale) woven, knitted, felted, or otherwise produced from or in combination with any natural or synthetic fiber, film, or substitute therefor which is intended for use or which may reasonably be expected to be used, in any product as defined in paragraph (h) of this section.

(g) The term "related material" means paper, plastic, rubber, synthetic film, or synthetic foam which is intended for use or which may reasonably be expected to be used in any product as defined in paragraph (h) of this section.

(h) The term "product" means any article of wearing apparel or interior furnishing.

(i) The term "Commission" means the Federal Trade Commission.

(j) The term "Federal Trade Commission Act" means the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914, as amended [15 U.S.C. 41 et seq.].

(June 30, 1953, ch. 164, § 2, 67 Stat. 111; Dec. 14, 1967, Pub. L. 90-189, § 1, 81 Stat. 568.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (j), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

AMENDMENTS

1967—Par. (b). Pub. L. 90-189, § 1(1), reduced from capital to lower-case the first letter of "territory" wherever appearing and redefined "commerce" to include commerce between the Commonwealth of Puerto Rico and any State or territory or foreign nation or the District of Columbia.

Par. (c). Pub. L. 90-189, § 1(2), reduced from capital to lower-case the first letter of "territory" wherever appearing.

Par. (d). Pub. L. 90-189, § 1(3), eliminated provisions which excepted hats, gloves, and footwear from the definition of "article of wearing apparel" provided that: such hats did not constitute or form part of a covering for the neck, face, or shoulders when worn by individuals; such gloves were not more than fourteen inches in length and were not affixed to or did not form an integral part of another garment; and such footwear did not consist of hosiery in whole or in part and was not affixed to or did not form an integral part of another garment.

Par. (e). Pub. L. 90-189, § 1(5), (6), added par. (e) and redesignated former par. (e) as (f).

Par. (f). Pub. L. 90-189, § 1(4), (5), (7), repealed former par. (f) which defined "interlining", redesignated former par. (e) as (f) and, in par. (f) as so redesignated, substituted "(except fiber, filament, or yarn for other than retail sale)" for "(other than fiber, filament, or yarn)" and "for use or which may reasonably be expected to be used, in any product as defined in paragraph (h) of this section" for "or sold for use in wearing apparel except that interlining fabrics when intended or sold for use in wearing apparel shall not be subject to this chapter".

Par. (g). Pub. L. 90-189, § 1(5), (8), added par. (g) and redesignated former par. (g) as (i).

Par. (h). Pub. L. 90-189, § 1(5), (8), added par. (h) and redesignated former par. (h) as (j).

Par. (i). Pub. L. 90-189, § 1(5), redesignated former par. (g) as (i).

Par. (j). Pub. L. 90-189, § 1(5), redesignated former par. (h) as (j).

EFFECTIVE DATE

Section 12 of act June 30, 1953, provided that this chapter shall take effect one year from June 30, 1953.

SHORT TITLE

Congress in enacting this chapter provided by section 1 of act June 30, 1953, that it should be known as the "Flammable Fabrics Act".

SAVINGS PROVISIONS

Section 11 of Pub. L. 90-189 provided that: "Notwithstanding the provisions of this Act [amending sections 1191 to 1195, 1197, 1198 and 1200 of this title and enacting sections 1201 to 1204 of this title], the standards of flammability in effect under the provisions of the Flammable Fabrics Act, as amended [this chapter], on the day preceding the date of enactment of this Act [Dec. 14, 1967], shall continue in effect for the fabrics and articles of wearing apparel to which they are applicable until superseded or modified by the Secretary of Commerce pursuant to the authority conferred by the amendments made by this Act."

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, along with the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of this chapter, see section 2079 of this title.

APPROPRIATIONS

Section 13 of act June 30, 1953, as amended by Pub. L. 90-189, § 9, Dec. 14, 1967, 81 Stat. 573; Pub. L. 92-542, § 1, Oct. 25, 1972, 86 Stat. 1108, appropriated $1,500,000 for the fiscal year ending June 30, 1968, $2,250,000 each for the fiscal year ending June 30, 1969, and the fiscal year ending June 30, 1970, and $4,000,000 for the fiscal year ending June 30, 1973, to carry out the provisions of this chapter.

HAZARDOUS SUBSTANCES

Federal Hazardous Substances Act as not modifying this chapter or regulations promulgated thereunder, see Pub. L. 86-613, § 18, (formerly § 17), July 12, 1960, 74 Stat. 380, as amended Pub. L. 89-756, § 4(a), Nov. 3, 1966, 80 Stat. 1305; renumbered and amended Pub. L. 91-113, § 4(a), (b)(1), Nov. 6, 1969, 83 Stat. 190, set out as a note under section 1261 of this title.

CROSS REFERENCES

Commercial standard of flammability, applicability to any product, fabric or related material, see section 1193 of this title.

§ 1192. Prohibited transactions

(a) The manufacture for sale, the sale, or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported, in commerce, or the sale or delivery after a sale or shipment in commerce, of any product, fabric, or related material which fails to conform to an applicable standard or regulation issued or amended under the provisions of section 1193 of this title, shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(b) The manufacture for sale, the sale, or the offering for sale, of any product made of fabric or related material which fails to conform to an applicable standard or regulation issued or amended under section 1193 of this title, and which has been shipped or received in commerce shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act. [15 U.S.C. 41 et seq.].

(June 30, 1953, ch. 164, § 3, 67 Stat. 111; Dec. 14, 1967, Pub. L. 90-189, § 2, 81 Stat. 568.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90-189 substituted "or the sale or delivery after a sale or shipment in commerce, of any product, fabric, or related material which fails to conform to an applicable standard or regulation issued or amended under the provisions of section 1193 of this title" for "or for the purpose of sale or delivery after sale in commerce, of any article of wearing apparel which under the provisions of section 1193 of this title is so highly flammable as to be dangerous when worn by individuals".

Subsec. (b). Pub. L. 90-189 deleted former subsec. (b) which made the sale or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported in commerce or for the purpose of sale or delivery after sale in commerce, of any fabric which under the provisions of section 1193 of this title was so highly flammable as to be dangerous when worn by individuals unlawful and an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act, redesignated former subsec. (c) as (b) and, in subsec. (b) as so redesignated, substituted "product made of fabric or related material which fails to conform to an applicable standard or regulation issued or amended under section 1193 of this title" for "article of wearing apparel made of fabric which under section 1193 of this title is so highly flammable as to be dangerous when worn by individuals".

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, along with the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of this chapter, see section 2079 of this title.

CROSS REFERENCES

Enforcement by Commission, see section 1194 of this title.

Guaranty, immunity from prosecution upon establishing, see section 1197 of this title.

Injunction and condemnation proceedings, see section 1195 of this title.

Misdemeanors, violations as, see section 1196 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1194, 1195, 1196, 1197 of this title.

§ 1193. Flammability standards or regulations

(a) Proceedings by Secretary for determination

Whenever the Secretary of Commerce finds on the basis of the investigations or research conducted pursuant to section 1201 of this title that a new or amended flammability standard or other regulation, including labeling, for a fabric, related material, or product may be needed to protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage, he shall institute proceedings for the determination of an appropriate flammability standard (including conditions and manner of testing) or other regulation or amendment thereto for such fabric, related material, or product.

(b) Necessary findings; effective date; exemptions

Each standard, regulation, or amendment thereto promulgated pursuant to this section shall be based on findings that such standard, regulation, or amendment thereto is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage, is reasonable technologically practicable, and appropriate, is limited to such fabrics, related materials, or products which have been determined to present such unreasonable risks, and shall be stated in objective terms. Each such standard, regulation, or amendment thereto, shall become effective twelve months from the date on which such standard, regulation, or amendment is promulgated, unless the Secretary of Commerce finds for good cause shown that an earlier or later effective date is in the public interest and publishes the reason for such finding. Each such standard or regulation or amendment thereto shall exempt fabrics related materials, or products in inventory or with the trade as of the date on which the standard, regulation, or amendment thereto, becomes effective except that, if the Secretary finds that any such fabric, related material, or product is so highly flammable as to be dangerous when used by consumers for the purpose for which it is intended, he may under such conditions as the Secretary may prescribe, withdraw, or limit the exemption for such fabric, related material, or product.

(c) Collection of information by Secretary; confidential status of trade secrets and related information; disclosure of confidential information

The Secretary of Commerce may obtain from any person by regulation or subpena issued pursuant thereto such information in the form of testimony, books, records, or other writings as is pertinent to the findings or determinations which he is required or authorized to make pursuant to this chapter. All information reported to or otherwise obtained by the Secretary or his representative pursuant to this subsection which information contains or relates to a trade secret or other matter referred to in section 1905 title 18, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress.

(d) Applicability of section 553 of title 5; oral presentation

Standards, regulations, and amendments to standards and regulations under this section shall be made in accordance with section 553 of title 5, except that interested persons shall be given an opportunity for the oral presentation of data, views, or arguments in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(e) Judicial review; additional information before Secretary; applicability of sections 701 to 706 of title 5; finality of judgment; survival of action

(1) Any person who will be adversely affected by any such standard or regulation or amendment thereto when it is effective may at any time prior to the sixtieth day after such standard or regulation or amendment thereto is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the standard or regulation, as provided in section 2112 of title 28.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendations, if any, for the modification or setting aside of his original standard or regulation or amendment thereto, with the return of such additional evidence.

(3) Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to review the standard or regulation in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter. The standard or regulation shall not be affirmed unless the findings required by the first sentence of subsection (b) of this section are supported by substantial evidence on the record taken as a whole. For purposes of this paragraph, the term "record" means the standard or regulation, any notice published with respect to the promulgation of such standard or regulation, the transcript required by subsection (d) of this section of any oral presentation, any written submission of interested parties, and any other information which the Commission considers relevant to such standard or regulation.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such standard or regulation of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(5) Any action instituted under this subsection shall survive, notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(6) The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

(f) Transcript of proceedings

A certified copy of the transcript of the record and proceedings under subsection (e) of this section shall be furnished by the Secretary to any interested party at his request, and payment of the costs thereof, and shall be admissible in any criminal, exclusion of imports, or other proceeding arising under or in respect of this chapter, irrespective of whether proceedings with respect to the standard or regulation or amendment thereto have previously been initiated or become final under subsection (e) of this section.

(June 30, 1953, ch. 164, § 4, 67 Stat. 112; Aug. 23, 1954, ch. 833, 68 Stat. 770; Dec. 14, 1967, Pub. L. 90-189, § 3, 81 Stat. 569; May 11, 1976, Pub. L. 94-284, § 20(a), 90 Stat. 515.)

AMENDMENTS

1976—Subsec. (d). Pub. L. 94-284, § 20(a)(1), provided that standards, regulations, and amendments made thereto, be made in accordance with section 553 of title 5, except that oral presentation be available with a transcript of such oral presentation kept.

Subsec. (e)(3). Pub. L. 94-284, § 20(a)(2), provided that the court not affirm a standard or regulation unless the findings of the Secretary are supported by substantial evidence on the record.

1967—Pub. L. 90-189 revised this section generally to achieve greater flexibility in the promulgation of flammability standards by substituting provisions authorizing the Secretary of Commerce to issue standards of flammability or regulations (including labeling) for fabrics, related materials or products after observing certain specified procedural requirements for provisions which prescribed certain fixed standards of flammability which could be updated only by legislation.

1954—Subsec. (c). Act Aug. 23, 1954, added subsec. (c).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 20(b) of Pub. L. 94-284 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to standards, regulations, and amendments to standards and regulations, under section 4 of the Flammable Fabrics Act [this section] the proceedings for the promulgation of which were begun after the date of the enactment of this Act [May 11, 1976]."

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, along with the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of this chapter, see section 2079 of this title.

CROSS REFERENCES

Foreign shipment of flammable product, fabric or related material, effect of, see section 1198 of this title.

Guaranty that product, fabric or related material conforms with applicable flammability standards, section 1197 of this title.

Persons excluded from operation of chapter, see section 1200 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1192, 1197, 1200, 2076 of this title.

§ 1194. Administration and enforcement

(a) Enforcement under Federal Trade Commission Act provisions

Except as otherwise specifically provided herein, sections 1192, 1194, 1195, and 1197 (b) of this title shall be enforced by the Commission under rules, regulations and procedures provided for in the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(b) Application of Federal Trade Commission Act provisions

The Commission is authorized and directed to prevent any person from violating the provisions of section 1192 of this title in the same manner, by the same means and with the same jurisdiction, powers and duties as though all applicable terms and provisions of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] were incorporated into and made a part of this chapter; and any such person violating any provision of section 1192 of this title shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act as though the applicable terms and provisions of the said Federal Trade Commission Act were incorporated into and made a part of this chapter.

(c) Rules and regulations

The Commission is authorized and directed to prescribe such rules and regulations, including provisions for maintenance of records relating to fabrics, related materials, and products, as may be necessary and proper for administration and enforcement of this chapter. The violation of such rules and regulations shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice, in commerce, under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(d) Inspection and analysis of products; cooperation with other governmental entities

The Commission is authorized to—

(1) cause inspections, analyses, tests, and examinations to be made of any product, fabric or related material which it has reason to believe falls within the prohibitions of this chapter; and

(2) cooperate on matters related to the purposes of this chapter with any department or agency of the Government; with any State or territory or with the District of Columbia or the Commonwealth of Puerto Rico; or with any department, agency, or political subdivision thereof; or with any person.

(June 30, 1953, ch. 164, § 5, 67 Stat. 112; Dec. 14, 1967, Pub. L. 90-189, § 4, 81 Stat. 570.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a), (b), and (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

AMENDMENTS

1967—Subsec. (c). Pub. L. 90-189, § 4(a), inserted ", including provisions for maintenance of records relating to fabrics, related materials, and products," following "rules and regulations" and added the sentence making violations of such rules and regulations unlawful and an unfair method of competition and an unfair and deceptive act or practice, in commerce, under the Federal Trade Commission Act.

Subsec. (d)(1). Pub. L. 90-189, § 4(b), substituted "product, fabric or related material" for "article of wearing apparel or fabric".

Subsec. (d)(2). Pub. L. 90-189, § 4(b), substituted "or territory or with the District of Columbia or the Commonwealth of Puerto Rico" for ", Territory, or possession or with the District of Columbia".

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, along with the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of this chapter, see section 2079 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1195 of this title.

§ 1195. Injunction and condemnation proceedings

(a) Temporary injunction; venue

Whenever the Commission has reason to believe that any person is violating or is about to violate section 1192 of this title, or a rule or regulation prescribed under section 1194(c) of this title, and that it would be in the public interest to enjoin such violation until complaint under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] is issued and dismissed by the Commission or until order to cease and desist made thereon by the Commission has become final within the meaning of the Federal Trade Commission Act or is set aside by the court on review, the Commission may bring suit in the district court of the United States for the district in which such person resides or transacts business, or, if such person resides or transacts business in Guam or the Virgin Islands, then in the District Court of Guam or in the District Court of the Virgin Islands (as the case may be), to enjoin such violation and upon proper showing a temporary injunction or restraining order shall be granted without bond.

(b) Process of libel for seizure and confiscation; manner of procedure; consolidation of trials

Whenever the Commission has reason to believe that any product has been manufactured or introduced into commerce or any fabric or related material has been introduced in commerce in violation of section 1192 of this title, it may institute proceedings by process of libel for the seizure and confiscation of such product, fabric, or related material in any district court of the United States within the jurisdiction of which such product, fabric, or related material is found. Proceedings in cases instituted under the authority of this section shall conform as nearly as may be to proceedings in rem in admiralty, except that on demand of either party and in the discretion of the court, any issue of fact shall be tried by jury. Whenever such proceedings involving identical products, fabrics, or related materials are pending in two or more jurisdictions, they may be consolidated for trial by order of any such court upon application seasonably made by any party in interest upon notice to all other parties in interest. Any court granting an order of consolidation shall cause prompt notification thereof to be given to other courts having jurisdiction in the cases covered thereby and the clerks of such other courts shall transmit all pertinent records and papers to the court designated for the trial of such consolidated proceedings.

(c) Application by defendant for representative sample of seized materials

In any such action the court, upon application seasonably made before trial, shall by order allow any party in interest, his attorney or agent, to obtain a representative sample of the product, fabric, or related material seized.

(d) Disposal of condemned materials

If such products, fabrics, or related materials are condemned by the court they shall be disposed of by destruction, by delivery to the owner or claimant thereof upon payment of court costs and fees and storage and other proper expenses and upon execution of good and sufficient bond to the effect that such products, fabrics, or related materials will not be disposed of until properly and adequately treated or processed so as to render them lawful for introduction into commerce, or by sale upon execution of good and sufficient bond to the effect that such products, fabrics, or related materials will not be disposed of until properly and adequately treated or processed so as to render them lawful for introduction into commerce. If such products, fabrics, or related materials are disposed of by sale the proceeds, less costs and charges, shall be paid into the Treasury of the United States.

(June 30, 1953, ch. 164, § 6, 67 Stat. 113; Dec. 14, 1967, Pub. L. 90-189, § 5, 81 Stat. 571.)

REFERENCES IN TEXT

The Federal Trade Commission, referred to in subsec. (a), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90-189, § 5(a), inserted ", or a rule or regulation prescribed under section 1194 (c) of this title," following "section 1192 of this title" and substituted "for the district in which such person resides or transacts business, or, if such person resides or transacts business in Guam or the Virgin Islands, then in the District Court of Guam or in the District Court of the Virgin Islands (as the case may be)" for "or in the United States court of any Territory for the district or Territory in which such person resides or transacts business".

Subsec. (b). Pub. L. 90-189, § 5(b), substituted "product" for "article of wearing apparel", "product, fabric, or related material" for "article of wearing apparel or fabric" in two instances and "products, fabrics, or related materials" for "articles of wearing apparel or fabrics", and inserted "or related material" preceding "has been introduced in commerce".

Subsec. (c). Pub. L. 90-189, § 5(b), substituted "product, fabric, or related material" for "article of wearing apparel or fabric".

Subsec. (d). Pub. L. 90-189, § 5(b), substituted "products, fabrics, or related materials" for "articles of wearing apparel or fabrics" wherever appearing and deleted "for wearing apparel purposes" preceding "until properly and adequately treated or processed" in two instances.

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, along with the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of this chapter, see section 2079 of this title.

CROSS REFERENCES

Enforcement by Commission, see section 1194 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1194 of this title.

§ 1196. Penalties

Any person who willfully violates section 1192 or 1197(b) of this title shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $5,000 or be imprisoned not more than one year or both in the discretion of the court: *Provided*, That nothing herein shall limit other provisions of this chapter.

(June 30, 1953, ch. 164, § 7, 67 Stat. 114.)

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, along with the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of this chapter, see section 2079 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1197 of this title.

§ 1197. Guaranties

(a) No person shall be subject to prosecution under section 1196 of this title for a violation of section 1192 of this title if such person (1) establishes a guaranty received in good faith signed by and containing the name and address of the person by whom the product, fabric, or related material guaranteed was manufactured or from whom it was received, to the effect that reasonable and representative tests made in accordance with standards issued or amended under the provisions of section 1193 of this title show that the fabric or related material covered by the guaranty, or used in the product covered by the guaranty, conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title, and (2) has not, by further processing, affected the flammability of the fabric, related material, or product covered by the guaranty which he received. Such guaranty shall be either (1) a separate guaranty specifically designating the product, fabric, or related material guaranteed, in which case it may be on the invoice or other paper relating to such product, fabric, or related material; (2) a continuing guaranty given by seller to buyer applicable to any product, fabric, or related material sold or to be sold to buyer by seller in a form as the Commission by rules and regulations may prescribe; or (3) a continuing guaranty filed with the Commission applicable to any product, fabric, or related material handled by a guarantor, in such form as the Commission by rules or regulations may prescribe.

(b) It shall be unlawful for any person to furnish, with respect to any product, fabric, or related material, a false guaranty (except a person relying upon a guaranty to the same effect received in good faith signed by and containing the name and address of the person by whom the product, fabric, or related material guaranteed was manufactured or from whom it was received) with reason to believe the product, fabric, or related material falsely guaranteed may be introduced, sold, or transported in commerce, and any person who violates the provisions of this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(June 30, 1953, ch. 164, § 8, 67 Stat. 114; Dec. 14, 1967, Pub. L. 90-189, § 6, 81 Stat. 572.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

AMENDMENTS

1967—Subsec. (a). Pub. L. 90-189 substituted "product, fabric, or related material" for "wearing apparel or fabric" wherever appearing and "in accordance with standards issued or amended under the provisions of section 1193 of this title show that the fabric or related material covered by the guaranty, or used in the product covered by the guaranty, conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title" for "under the procedures provided in section 1193 of this title show that the fabric covered by the guaranty, or used in the wearing apparel covered by the guaranty, is not, under the provisions of section 1193 of this title, so highly flammable as to be dangerous when worn by individuals", added cl. (2), and redesignated former cl. (2) as (3).

Subsec. (b). Pub. L. 90-189 substituted "product, fabric, or related material" for "wearing apparel or fabric" wherever appearing.

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, along with the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of this chapter, see section 2079 of this title.

CROSS REFERENCES

Enforcement by Commission, see section 1194 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1194, 1196 of this title.

§ 1198. Shipments from foreign countries; demand for redelivery; claim for liquidated damages

An imported product, fabric, or related material to which flammability standards under this chapter are applicable shall not be delivered from customs custody except as provided in section 1499 of title 19. In the event an imported product, fabric, or related material is delivered from customs custody under bond, as provided in section 1499 of title 19 and fails to conform with an applicable flammability standard in effect on the date of entry of such merchandise, the Secretary of the Treasury shall demand redelivery and in the absence thereof shall assert a claim for liquidated damages for breach of a condition of the bond arising out of such failure to conform or redeliver in accordance with regulations prescribed by the Secretary of the Treasury or his delegate. When asserting a claim for liquidated damages against an importer for failure to redeliver such nonconforming goods, the liquidated damages shall be not less than 10 per centum of the value of the nonconforming merchandise if, within five years prior thereto, the importer has previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand from the Secretary of the Treasury as set forth above.

(June 30, 1953, ch. 164, § 9, 67 Stat. 114; Dec. 14, 1967, Pub. L. 90-189, § 7, 81 Stat. 572.)

AMENDMENTS

1967—Pub. L. 90-189 substituted provisions prohibiting the delivery from customs of imported products, fabrics, or related materials to which flammability standards are applicable, except as provided in section 1499 of Title 19, and requiring the Secretary of the Treasury to demand redelivery in the event any such imported product, fabric, or related material is delivered from customs custody under bond and fails to conform with an applicable flammability standard, and in the absence of such redelivery to assert a claim for liquidated damages for breach of the bond, which damages shall not be less than 10 per centum of the value of the nonconforming merchandise if, within 5 years prior thereto, the importer has previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand by the Secretary for provisions which authorized the Commission to prohibit any person who had exported or who had attempted to export from any foreign country into the United States any wearing apparel or fabric which was so highly flammable as to be dangerous when worn by individuals from further participation in the exportation from any foreign country into the United States of any wearing apparel or fabric except upon filing bonds with the Secretary of Treasury in a sum double the value of said products and any duty thereon, conditioned upon compliance with the provisions of this chapter.

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, along with the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of this chapter, see section 2079 of this title.

§ 1199. Chapter as additional legislation

The provisions of this chapter shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other law. If any provision of this chapter or the application thereof to any person or circumstances is held invalid the remainder of the chapter and the application of such provisions to any other person or circumstances shall not be affected thereby.

(June 30, 1953, ch. 164, § 10, 67 Stat. 115.)

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, along with the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of this chapter, see section 2079 of this title.

§ 1200. Persons excluded from operation of chapter

The provisions of this chapter shall not apply (a) to any common carrier, contract carrier, or freight forwarder in transporting a product, fabric, or related material shipped or delivered for shipment into commerce in the ordinary course of its business; (b) to any converter, processor, or finisher in performing a contract or commission service for the account of a person subject to the provisions of this chapter: *Provided,* That said converter, processor, or finisher does not cause any product, fabric, or related material to become subject to this chapter contrary to the terms of the contract or commission service; or (c) to any product, fabric, or related material shipped or delivered for shipment into commerce for the purpose of finishing or processing such product, fabric, or related material so that it conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title.

(June 30, 1953, ch. 164, § 11, 67 Stat. 115; Dec. 14, 1967, Pub. L. 90-189, § 8, 81 Stat. 573.)

AMENDMENTS

1967—Pub. L. 90-189 substituted "in transporting a product, fabric, or related material" for "with respect to an article of wearing apparel or fabric", "product, fabric, or related material" for "article of wearing apparel or fabric" in two instances, and "such product, fabric, or related material so that it conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title" for "to render such article or fabric not so highly flammable, under the provisions of section 1193 of this title, as to be dangerous when worn by individuals".

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, along with the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of this chapter, see section 2079 of this title.

§ 1201. Studies, investigations, research, development and training; reports to President and Congress

(a) The Secretary of Health, Education, and Welfare in cooperation with the Secretary of Commerce shall conduct a continuing study and investigation of the deaths, injuries, and economic losses resulting from accidental burning of products, fabrics, or related materials. The Secretary of Health, Education, and Welfare shall submit annually a report to the President and to the Congress containing the results of the study and investigation.

(b) In cooperation with appropriate public and private agencies, the Secretary of Commerce is authorized to—

(1) conduct research into the flammability of products, fabrics, and materials;

(2) conduct feasibility studies on reduction of flammability of products, fabrics, and materials;

(3) develop flammability test methods and testing devices; and

(4) offer appropriate training in the use of flammability test methods and testing devices.

The Secretary shall annually report the results of these activities to the Congress.

(June 30, 1953, ch. 164, § 14, as added Dec. 14, 1967, Pub. L. 90-189, § 10, 81 Stat. 573.)

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, along with the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of this chapter, see section 2079 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1193 of this title.

§ 1202. Exemption of exports and materials imported for processing or storage in bond

(a) This chapter shall not apply to any fabric, related material, or product which is to be exported from the United States, if such fabric, related material, or product, and any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export and such fabric, related material, or product is in fact exported from the United States; except that this chapter shall apply to any fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

(b) This chapter shall not apply to any fabric, related material, or product which is imported into the United States for dyeing, finishing, other processing, or storage in bond, and export from the United States, if such fabric, related material, or product, and any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export, and such fabric, related material, or product is in fact exported from the United States; except that this chapter shall apply to any such imported fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

(June 30, 1953, ch. 164, § 15, as added Dec. 14, 1967, Pub. L. 90-189, § 10, 81 Stat. 574.)

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, along with the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of this chapter, see section 2079 of this title.

§ 1203. Preemption of Federal standards

(a) Standards or regulations designed to protect against same risk as State standards or regulations; identical State standards

Except as provided in subsections (b) and (c) of this section, whenever a flammability standard or other regulation for a fabric, related material, or product is in effect under this chapter, no State or political subdivision of a State may establish or continue in effect a flammability standard or other regulation for such fabric, related material, or product if the standard or other regulation is designed to protect against the same risk of occurrence of fire with respect to which the standard or other regulation under this chapter is in effect unless the State or political subdivision standard or other regulation is identical to the Federal standard or other regulation.

(b) State standards or regulations which afford a higher degree of protection

The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a flammability standard or other regulation applicable to a fabric, related material, or product for its own use which standard or other regulation is designed to protect against a risk of occurrence of fire with respect to which a flammability standard or other regulation is in effect under this chapter and which is not identical to such standard or other regulation if the Federal, State, or political subdivision standard or other regulation provides a higher degree of protection from such risk of occurrence of fire than the standard or other regulation in effect under this chapter.

(c) Exemption for State standards or regulations; requirements; determination of burden on interstate commerce; notice and hearing

(1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a) of this section, under such conditions as may be prescribed in such regulation, any flammability standard or other regulation of such State or political subdivision applicable to a fabric, related material, or product subject to a standard or other regulation in effect under this chapter, if—

(A) compliance with the State or political subdivision requirement would not cause the fabric, related material, or product to be in violation of the standard or other regulation in effect under this chapter, and

(B) the State or political subdivision standard or other regulation (i) provides a significantly higher degree of protection from the risk of occurrence of fire with respect to which the Federal standard or other regulation is in effect, and (ii) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision flammability standard or other regulation on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such flammability standard or other regulation, the cost of complying with such flammability standard or other regulation, the geographic distribution of the fabric, related material, or product to which the flammability standard or other regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar flammability standard or other regulation, and the need for a national, uniform flammability standard or other regulation under this chapter for such fabric, related material, or product.

(2) A regulation under paragraph (1) granting an exemption for a flammability standard or other regulation of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, notice with respect to the promulgation of the regulation

and has provided opportunity for the oral presentation of views respecting its promulgation.

(d) Flammability standards or regulations; definitions

For purposes of this section—

(1) a reference to a flammability standard or other regulation for a fabric, related material, or product in effect under this chapter includes a standard of flammability continued in effect by section 11 of the Act of December 14, 1967 (Public Law 90-189); and

(2) the term "Commission" means the Consumer Product Safety Commission.

(June 30, 1953, ch. 164, § 16, as added Dec. 14, 1967, Pub. L. 90-189, § 10, 81 Stat. 574, and amended May 11, 1976, Pub. L. 94-284, § 17(b), 90 Stat. 512.)

REFERENCES IN TEXT

Section 11 of the Act of December 14, 1967, (Public Law 90-189), referred to in subsec. (d)(1), is set out as a note under section 1191 of this title.

AMENDMENTS

1976—Pub. L. 94-284 substituted provisions which permitted the use of flammability standards or regulations not identical with the standards or regulations in effect under this chapter provided that the standards or regulations used afford a higher degree of protection from the risk of the occurrence of fire than the standards or regulation under this chapter, and which permitted the Commission, by regulation promulgated in accordance with section 553 of title 5, to grant an exemption for a flammability standard or other regulation of a State or political subdivision of a state, for the prior supremacy of chapter provision.

§ 1204. National Advisory Committee for Flammable Fabrics Act

(a) Appointment; membership

The Secretary of Commerce shall appoint a National Advisory Committee for the Flammable Fabrics Act, composed of not less than nine members, fairly representative of manufacturers, distributors, and the consuming public. The members of the Committee who are appointed to represent manufacturers shall include representatives from (1) the natural fiber producing industry, (2) the manmade fiber producing industry, and (3) manufacturers of fabrics, related materials, apparel, or interior furnishings. Each member appointed by the Secretary shall hold office for not more than two years, except that any member may be reappointed.

(b) Compensation; travel expenses

Members of the Committee who are not officers or employees of the United States shall, while attending meetings or conferences of such Committee or otherwise engaged in the business of such Committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized in section 5703 of title 5 for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.

(c) Consultation with Secretary

The Secretary shall consult with the National Advisory Committee before prescribing flammability standards or other regulations established under this chapter.

(June 30, 1953, ch. 164, § 17, as added Dec. 14, 1967, Pub. L. 90-189, § 10, 81 Stat. 574, and amended May 11, 1976, Pub. L. 94-284, § 19, 90 Stat. 514.)

REFERENCES IN TEXT

The Flammable Fabrics Act, referred to in the section catchline and text, is act June 30, 1953, ch. 164, 67 Stat. 111, and is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note under section 1191 of this title and Tables volume.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-284 added provision that members of the Committee appointed to represent manufacturers include representatives from the natural fiber producing industry, the manmade fiber producing industry, and the manufacturers of fabrics, related materials, apparel, or interior furnishings.

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, along with the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of this chapter, see section 2079 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 26—HOUSEHOLD REFRIGERATORS

Sec.
1211. Prohibition against transportation of refrigerators without safety devices.
1212. Violations; misdemeanor; penalties.
1213. Publication of safety standards in Federal Register.
1214. Interstate commerce defined.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2079 of this title.

§ 1211. Prohibition against transportation of refrigerators without safety devices

It shall be unlawful for any person to introduce or deliver for introduction into interstate commerce any household refrigerator manufactured on or after the date this section takes effect unless it is equipped with a device, enabling the door thereof to be opened from the inside, which conforms with standards prescribed pursuant to section 1213 of this title.

(Aug. 2, 1956, ch. 890, § 1, 70 Stat. 953.)

REFERENCES IN TEXT

For date this section takes effect, referred to in text, see effective date note under this section.

EFFECTIVE DATE

Section 5 of act Aug. 2, 1956, provided that: "This Act [this chapter] shall take effect on the date of its enactment [Aug. 2, 1956], except that the first section of this Act [this section] shall take effect one year and 90 days after the date of publication of commercial standards first established under section 3 of this Act [section 1213 of this title]. In the event of a change in said commercial standards first established, a like period shall be allowed for compliance with said change in commercial standards."

TRANSFER OF FUNCTIONS

Functions of the Secretary of Commerce and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

CROSS REFERENCES

Misdemeanor, violation as, see section 1212 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1212 of this title.

§ 1212. Violations; misdemeanor; penalties

Any person who violates section 1211 of this title shall be guilty of a misdemeanor and shall, upon conviction thereof, be subject to imprisonment for not more than one year, or a fine of not more than $1,000, or both.

(Aug. 2, 1956, ch. 890, § 2, 70 Stat. 953.)

TRANSFER OF FUNCTIONS

Functions of the Secretary of Commerce and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

CROSS REFERENCES

Misdemeanor, offense punishable by imprisonment not exceeding one year, see section 1 of Title 18, Crimes and Criminal Procedure.

§ 1213. Publication of safety standards in Federal Register

The Secretary of Commerce shall prescribe and publish in the Federal Register commercial standards for devices which, when used in or on household refrigerators, will enable the doors thereof to be opened easily from the inside; and the standards first established under this section shall be so prescribed and published not later than one year after August 2, 1956.

(Aug. 2, 1956, ch. 890, § 3, 70 Stat. 953.)

TRANSFER OF FUNCTIONS

Functions of the Secretary of Commerce and the Federal Trade Commission under the chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

CROSS REFERENCES

Transportation of refrigerators not conforming to standards as unlawful, see section 1211 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1211 of this title.

§ 1214. Interstate commerce defined

As used in this chapter, the term "interstate commerce" includes commerce between one State, Territory, possession, the District of Columbia, or the Commonwealth of Puerto Rico and another State, Territory, possession, the District of Columbia, or the Commonwealth of Puerto Rico.

(Aug. 2, 1956, ch. 890, § 4, 70 Stat. 953.)

TRANSFER OF FUNCTIONS

Functions of the Secretary of Commerce and the Federal Trade Commission under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

CHAPTER 27—AUTOMOBILE DEALER SUITS AGAINST MANUFACTURERS

Sec.
1221. Definitions.
1222. Authorization of suits against manufacturers; amount of recovery; defenses.
1223. Limitations.
1224. Antitrust laws as affected.
1225. State laws as affected.

§ 1221. Definitions

As used in this chapter—

(a) The term "automobile manufacturer" shall mean any person, partnership, corporation, association, or other form of business enterprise engaged in the manufacturing or assembling of passenger cars, trucks, or station wagons, including any person, partnership, or corporation which acts for and is under the control of such manufacturer or assembler in connection with the distribution of said automotive vehicles.

(b) The term "franchise" shall mean the written agreement or contract between any automobile manufacturer engaged in commerce and any automobile dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract.

(c) The term "automobile dealer" shall mean any person, partnership, corporation, association, or other form of business enterprise resident in the United States or in any Territory thereof or in the District of Columbia operating under the terms of a franchise and engaged in the sale or distribution of passenger cars, trucks, or station wagons.

(d) The term "commerce" shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(e) The term "good faith" shall mean the duty of each party to any franchise, and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: *Provided*, That recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith.

(Aug. 8, 1956, ch. 1038, § 1, 70 Stat. 1125.)

§ 1222. Authorization of suits against manufacturers; amount of recovery; defenses

An automobile dealer may bring suit against any automobile manufacturer engaged in commerce, in any district court of the United States in the district in which said manufacturer resides, or is found, or has an agent, without respect to the amount in controversy, and shall recover the damages by him sustained and the cost of suit by reason of the failure of said automobile manufacturer from and after August 8, 1956, to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer: *Provided,* That in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith.

(Aug. 8, 1956, ch. 1038, § 2, 70 Stat. 1125.)

§ 1223. Limitations

Any action brought pursuant to this chapter shall be forever barred unless commenced within three years after the cause of action shall have accrued.

(Aug. 8, 1956, ch. 1038, § 3, 70 Stat. 1125.)

§ 1224. Antitrust laws as affected

No provision of this chapter shall repeal, modify, or supersede, directly or indirectly, any provision of the antitrust laws of the United States.

(Aug. 8, 1956, ch. 1038, § 4, 70 Stat. 1125.)

References in Text

The antitrust laws, referred to in the catchline and text, are classified generally to chapter 1 (§ 1 et seq.) of this title.

§ 1225. State laws as affected

This chapter shall not invalidate any provision of the laws of any State except insofar as there is a direct conflict between an express provision of this chapter and an express provision of State law which can not [1] be reconciled.

(Aug. 8, 1956, ch. 1038, § 5, 70 Stat. 1126.)

CHAPTER 28—DISCLOSURE OF AUTOMOBILE INFORMATION

Sec.
1231. Definitions.
1232. Label and entry requirements.
1232a. Repealed.
1233. Violations and penalties.
  (a) Failure to affix required label.
  (b) Failure to endorse required label.
  (c) Removal, alteration, or illegibility of required label.

§ 1231. Definitions

For purposes of this chapter—

(a) The term "manufacturer" shall mean any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who acts for and is under the control of such manufacturer, assembler, or importer in connection with the distribution of new automobiles.

(b) The term "person" means an individual, partnership, corporation, business trust, or any organized group of persons.

(c) The term "automobile" includes any passenger car or station wagon.

(d) The term "new automobile" means an automobile the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

(e) The term "dealer" shall mean any person resident or located in the United States or any Territory thereof or in the District of Columbia engaged in the sale or the distribution of new automobiles to the ultimate purchaser.

(f) The term "final assembly point" means—

(1) in the case of a new automobile manufactured or assembled in the United States, or in any Territory of the United States, the plant, factory, or other place at which a new automobile is produced or assembled by a manufacturer and from which such automobile is delivered to a dealer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such automobile, whether or not such component parts are permanently installed in or on such automobile; and

(2) in the case of a new automobile imported into the United States, the port of importation.

(g) The term "ultimate purchaser" means, with respect to any new automobile, the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases such new automobile for purposes other than resale.

(h) The term "commerce" shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation. New automobiles delivered to, or for further delivery to, ultimate purchasers within the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, Virgin Islands, American Samoa, the Trust Territories of the Pacific, the Canal Zone, Wake Island, Midway Island, Kingman Reef, Johnson Island, or within any other place under the jurisdiction of the United States shall be deemed to have been distributed in commerce.

(Pub. L. 85-506, § 2, July 7, 1958, 72 Stat. 325; Pub. L. 92-359, July 28, 1972, 86 Stat. 502.)

Amendments

1972—Subsec. (h). Pub. L. 92-359 added provision that new automobiles delivered to ultimate purchasers within the United States and other enumerated areas shall be deemed to have been distributed in commerce.

Effective Date

Section 5 of Pub. L. 85-506 provided that: "This Act [this chapter] shall take effect on the first day of October 1958 or on the first day of the introduction of any new model of automobile in any line of automobile beginning after the date of enactment of this Act [July 7, 1958], whichever date shall last occur."

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[1] So in original. Should read "cannot".

SHORT TITLE

Section 1 of Pub. L. 85-506 provided that Pub. L. 85-506, which is classified to this chapter, should be popularly known as the "Automobile Information Disclosure Act".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2006 of this title.

§ 1232. Label and entry requirements

Every manufacturer of new automobiles distributed in commerce shall, prior to the delivery of any new automobile to any dealer, or at or prior to the introduction date of new models delivered to a dealer prior to such introduction date, securely affix to the windshield, or side window of such automobile a label on which such manufacturer shall endorse clearly, distinctly and legibly true and correct entries disclosing the following information concerning such automobile—

(a) the make, model, and serial or identification number or numbers;

(b) the final assembly point;

(c) the name, and the location of the place of business, of the dealer to whom it is to be delivered;

(d) the name of the city or town at which it is to be delivered to such dealer;

(e) the method of transportation used in making delivery of such automobile, if driven or towed from final assembly point to place of delivery; and

(f) the following information:

(1) the retail price of such automobile suggested by the manufacturer;

(2) the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment, physically attached to such automobile at the time of its delivery to such dealer, which is not included within the price of such automobile as stated pursuant to paragraph (1);

(3) the amount charged, if any, to such dealer for the transportation of such automobile to the location at which it is delivered to such dealer;

(4) the total of the amounts specified pursuant to paragraphs (1), (2), and (3).

(Pub. L. 85-506, § 3, July 7, 1958, 72 Stat. 326.)

CROSS REFERENCES

Failure to affix label, fine for, see section 1233 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1233, 2006 of this title.

§ 1232a. Repealed. Pub. L. 92-178, title IV, § 401(g)(7)(A), Dec. 10, 1971, 85 Stat. 534

Section, Pub. L. 91-614, title III, § 304, Dec. 31, 1970, 84 Stat. 1845, related to Federal manufacturers excise tax on labels and provided for violations and penalties. It was not a part of the Automobile Information Disclosure Act, which comprises this chapter generally.

EFFECTIVE DATE OF REPEAL

Section 401(g)(7)(B) of Pub. L. 92-178 provided that: "Subparagraph (A) [repealing this section] shall apply to acts (or failures to act) after the date of the enactment of this Act [Dec. 10, 1971]."

§ 1233. Violations and penalties

(a) Failure to affix required label

Any manufacturer of automobiles distributed in commerce who willfully fails to affix to any new automobile manufactured or imported by him the label required by section 1232 of this title shall be fined not more than $1,000. Such failure with respect to each automobile shall constitute a separate offense.

(b) Failure to endorse required label

Any manufacturer of automobiles distributed in commerce who willfully fails to endorse clearly, distinctly and legibly any label as required by section 1232 of this title, or who makes a false endorsement of any such label, shall be fined not more than $1,000. Such failure or false endorsement with respect to each automobile shall constitute a separate offense.

(c) Removal, alteration, or illegibility of required label

Any person who willfully removes, alters, or renders illegible any label affixed to a new automobile pursuant to section 1232 of this title, or any endorsement thereon, prior to the time that such automobile is delivered to the actual custody and possession of the ultimate purchaser of such new automobile, except where the manufacturer relabels the automobile in the event the same is rerouted, repurchased, or reacquired by the manufacturer of such automobile, shall be fined not more than $1,000, or imprisoned not more than one year, or both. Such removal, alteration, or rendering illegible with respect to each automobile shall constitute a separate offense.

(Pub. L. 85-506, § 4, July 7, 1958, 72 Stat. 326.)

CHAPTER 29—MANUFACTURE, TRANSPORTATION, OR DISTRIBUTION OF SWITCHBLADE KNIVES

Sec.

1241. Definitions.
1242. Introduction, manufacture for introduction, transportation or distribution in interstate commerce; penalty.
1243. Manufacture, sale, or possession within specific jurisdictions; penalty.
1244. Exceptions.

§ 1241. Definitions

As used in this chapter—

(a) The term "interstate commerce" means commerce between any State, Territory, possession of the United States, or the District of Columbia, and any place outside thereof.

(b) The term "switchblade knife" means any knife having a blade which opens automatically—

(1) by hand pressure applied to a button or other device in the handle of the knife, or

(2) by operation of inertia, gravity, or both.

(Pub. L. 85-623, § 1, Aug. 12, 1958, 72 Stat. 562.)

REFERENCES IN TEXT

"This chapter" referred to in text, in the original, read "this Act" meaning Pub. L. 85-623, which enacted sections 1241 to 1244 of this title and amended section 1716 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE

Section 6 of Pub. L. 85-623 provided that: "This Act [adding this chapter and amending section 1716 of Title 18, Crimes and Criminal Procedure] shall take effect on the sixtieth day after the date of its enactment [August 12, 1958]."

§ 1242. Introduction, manufacture for introduction, transportation or distribution in interstate commerce; penalty

Whoever knowingly introduces, or manufactures for introduction, into interstate commerce, or transports or distributes in interstate commerce, any switchblade knife, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(Pub. L. 85-623, § 2, Aug. 12, 1958, 72 Stat. 562.)

CROSS REFERENCES

Exceptions from application of section, see section 1244 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1244 of this title.

§ 1243. Manufacture, sale, or possession within specific jurisdictions; penalty

Whoever, within any Territory or possession of the United States, within Indian country (as defined in section 1151 of title 18), or within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18), manufactures, sells, or possesses any switchblade knife, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(Pub. L. 85-623, § 3, Aug. 12, 1958, 72 Stat. 562.)

CROSS REFERENCES

Exceptions from application of section, see section 1244 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1244 of this title.

§ 1244. Exceptions

Sections 1242 and 1243 of this title shall not apply to—

(1) any common carrier or contract carrier, with respect to any switchblade knife shipped, transported, or delivered for shipment in interstate commerce in the ordinary course of business;

(2) the manufacture, sale, transportation, distribution, possession, or introduction into interstate commerce, of switchblade knives pursuant to contract with the Armed Forces;

(3) the Armed Forces or any member or employee thereof acting in the performance of his duty; or

(4) the possession, and transportation upon his person, of any switchblade knife with a blade three inches or less in length by any individual who has only one arm.

(Pub. L. 85-623, § 4, Aug. 12, 1958, 72 Stat. 562.)

CHAPTER 30—HAZARDOUS SUBSTANCES

Sec.
1261. Definitions.
1262. Declaration of hazardous substances.
  (a) Declaration of hazardous substances by regulation; review.
  (b) Reasonable variations or additional label requirements.
  (c) Exemption from requirements by regulation.
  (d) Exemption from requirements of this chapter of substances or containers adequately regulated by other provisions of law.
  (e) Regulation of toys or articles intended for use by children.
1263. Prohibited acts.
1264. Penalties; exceptions.
1265. Seizures.
  (a) Grounds and jurisdiction.
  (b) Procedure; multiplicity of pending proceedings.
  (c) Disposition of goods after decree of condemnation.
  (d) Costs and fees.
  (e) Removal of case for trial.
1266. Hearing before report of criminal violation.
1267. Injunctions; criminal contempt; trial by court or jury.
1268. Proceedings in name of United States; subpenas.
1269. Regulations.
1270. Examinations and investigations.
  (a) Authority to conduct.
  (b) Inspection; notice; samples.
  (c) Receipt for sample; results of analysis.
1271. Records of interstate shipment.
1272. Publicity; reports; dissemination of information.
1273. Imports.
  (a) Delivery of samples to Secretary of Health, Education, and Welfare; examination; refusal of admission.
  (b) Disposition of refused articles.
  (c) Expenses in connection with refused articles.
1274. Repurchase of banned hazardous substances; procedure; definitions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1460, 2052, 2079 of this title.

§ 1261. Definitions

For the purposes of this chapter—

(a) The term "territory" means any territory or possession of the United States, including the District of Columbia and the Commonwealth of Puerto Rico but excluding the Canal Zone.

(b) The term "interstate commerce" means (1) commerce between any State or territory and any place outside thereof, and (2) commerce within the District of Columbia or within any territory not organized with a legislative body.

(c) The term "Department" means the Department of Health, Education, and Welfare.

(d) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(e) The term "person" includes an individual, partnership, corporation, and association.

(f) The term "hazardous substance" means:

(1)(A) Any substance or mixture of substances which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substances or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

(B) Any substances which the Secretary by regulation finds, pursuant to the provisions of section 1262(a) of this title, meet the requirements of subparagraph (1)(A) of this paragraph.

(C) Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the Secretary determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health.

(D) Any toy or other article intended for use by children which the Secretary by regulation determines, in accordance with section 1262(e) of this title, presents an electrical, mechanical, or thermal hazard.

(2) The term "hazardous substance" shall not apply to pesticides subject to the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], nor to foods, drugs and cosmetics subject to the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], nor to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house, nor to tobacco and tobacco products, but such term shall apply to any article which is not itself a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazardous substance within the meaning of paragraph (1) of this subsection by reason of bearing or containing such a pesticide.

(3) The term "hazardous substance" shall not include any source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], and regulations issued pursuant thereto by the Atomic Energy Commission.

(g) The term "toxic" shall apply to any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

(h)(1) The term "highly toxic" means any substance which falls within any of the following categories: (a) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered; or (b) produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably forseeable manner; or (c) produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for twenty-four hours or less.

(2) If the Secretary finds that available data on human experience with any substance indicate results different from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence.

(i) The term "corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action; but shall not refer to action on inanimate surfaces.

(j) The term "irritant" means any substance not corrosive within the meaning of subparagraph (i) of this section which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(k) The term "strong sensitizer" means a substance which will cause on normal living tissue through an allergic or photodynamic process a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the Secretary. Before designating any substance as a strong sensitizer, the Secretary, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

(*l*) The term "extremely flammable" shall apply to any substance which has a flash point at or below twenty degrees Fahrenheit as determined by the Tagliabue Open Cup Tester, the term "flammable" shall apply to any substance which has a flash point of above twenty degrees to and including eighty degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester, and the term "combustible" shall apply to any substance which has a flash point above eighty degrees Fahrenheit to and including one hundred and fifty degrees, as determined by the Tagliabue Open Cup Tester; except that the flammability or combustibility of solids and of the contents of self-pressurized containers shall be determined by methods found by the Secretary to be generally applicable to such materials or containers, respectively, and established by regulations issued by him, which regulations shall also define the terms "flammable", "combustible", and "extremely flammable" in accord with such methods.

(m) The term "radioactive substance" means a substance which emits ionizing radiation.

(n) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears (1) on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper and (2) on all accompanying literature where there are directions for use, written or otherwise.

(*o*) The term "immediate container" does not include package liners.

(p) The term "misbranded hazardous substance" means a hazardous substance (including a toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted) intended, or packaged in a form suitable, for use in the household or by children, if the packaging or labeling of such substance is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title or if such substance, except as otherwise provided by or pursuant to section 1262 of this title, fails to bear a label—

(1) which states conspicuously (A) the name and place of business of the manufacturer, packer, distributor or seller; (B) the common or usual name or the chemical name (if there be no common or usual name) of the hazardous substance or of each component which contributes substantially to its hazard, unless the Secretary by regulation permits or requires the use of a recognized generic name; (C) the signal word "DANGER" on substances which are extremly flammable, corrosive, or highly toxic; (D) the signal word "WARNING" or "CAUTION" on all other hazardous substances; (E) an affirmative statement of the principal hazard or hazards, such as "Flammable", "Combustible", "Vapor Harmful", "Causes Burns", "Absorbed Through Skin", or similar wording descriptive of the hazard; (F) precautionary measures describing the action to be followed or avoided, except when modified by regulation of the Secretary pursuant to section 1262 of this title; (G) instruction, when necessary or appropriate, for first-aid treatment; (H) the word "poison" for any hazardous substance which is defined as "highly toxic" by subsection (h) of this section; (I) instructions for handling and storage of packages which require special care in handling or storage; and (J) the statement (i) "Keep out of the reach of children" of its practical equivalent, or, (ii) if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard, and

(2) on which any statements required under subparagraph (1) of this paragraph are located prominently and are in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

The term "misbranded hazardous substance" also includes a household substance as defined in section 1471(2)(d) of this title if it is a substance described in paragraph (1) of subsection (f) of this section and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title.

(q)(1) The term "banned hazardous substance" means (A) any toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted; or (B) any hazardous substance intended, or packaged in a form suitable, for use in the household, which the Secretary by regulation classifies as a "banned hazardous substance" on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this chapter for that substance, the degree or nature of the hazard involved in the presence or use of such substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of interstate commerce: *Provided*, That the Secretary, by regulation, (i) shall exempt from clause (A) of this subsection articles, such as chemical sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved or necessarily present an electrical, mechanical, or thermal hazard, and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity, and may reasonably be expected, to read and heed such directions and warnings, and (ii) shall exempt from clause (A), and provide for the labeling of, common fireworks (including toy paper caps, cone fountains, cylinder fountains, whistles without report, and sparklers) to the extent that he determines that such articles can be adequately labeled to protect the purchasers and users thereof.

(2) Proceedings for the issuance, amendment, or repeal of regulations pursuant to clause (B) of paragraph (1) of this subsection shall be governed by the provisions of sections 371(e), (f), and (g) of title 21: *Provided*, That if the Secretary finds that the distribution for household use of the hazardous substance involved presents an imminent hazard to the public health, he may by order published in the Federal Register give notice of such finding, and thereupon such substance when intended or offered for household use, or when so packaged as to be suitable for such use, shall be deemed to be a "banned hazardous substance" pending the completion of proceedings relating to the issuance of such regulations.

(r) An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electric shock.

(s) An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness (1) from fracture, fragmentation, or disassembly of the article, (2) from propulsion of the article (or any part or accessory thereof), (3) from points or other protrusions, surfaces, edges, openings, or closures, (4) from moving parts, (5) from lack of insufficiency of controls to reduce or stop motion, (6) as a result of self-adhering characteristics of the article, (7) because the article (or any part or accessory thereof) may be aspirated or ingested, (8) because of instability, or (9) because of any other aspect of the article's design or manufacture.

(t) An article may be determined to present a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces.

(Pub. L. 86-613, § 2, July 12, 1960, 74 Stat. 372; Pub. L. 89-756, §§ 2(a)-(c), 3(a), Nov. 3, 1966, 80 Stat. 1303, 1304; Pub. L. 91-113, §§ 2(a), (c), (d), 3, Nov. 6, 1969, 83 Stat. 187-189; Pub. L. 91-601, § 7(a), Dec. 30, 1970, 84 Stat. 1673; Pub. L. 92-516, § 3(1), Oct. 21, 1972, 86 Stat. 998; Pub. L. 94-284, § 3(c), May 11, 1976, 90 Stat. 503.)

References in Text

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 86-613. For complete classification of this Act to the Code, see "Short Title" note set out under this section and Tables volume.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in par. (f)(2), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§ 136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables volume.

The Federal Food, Drug, and Cosmetic Act, referred to in par. (f)(2), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables volume.

The Atomic Energy Act of 1954, as amended, referred to in par. (f)(3), is act Aug. 30, 1954, ch. 1073, 68 Stat. 921, which is classified generally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables volume.

Amendments

1976—Subsec. (f)(2). Pub. L. 94-284 inserted "nor to tobacco and tobacco products," following "or refrigeration system of a house".

1972—Subsec. (f)(2). Pub. L. 92-516 substituted "pesticides" for "economic poisons" and "a pesticide" for "an economic poison" wherever appearing therein.

1970—Subsec. (p). Pub. L. 91-601 substituted in text preceding par. (1) "if the packaging or labeling of such substance is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title or if such substance" for "which substance" and added following and below par. (2) provision including in "misbranded hazardous substance" a household substance as defined in section 1471(2)(D) of this title if it is a substance described in par. (1) of subsec. (f) of this section and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title.

1969—Subsec. (f)(1)(A). Pub. L. 91-113, § 3(a), added "or combustible" following "is flammable".

Subsec. (f)(1)(D). Pub. L. 91-113, § 2(a), added subsec. (f)(1)(D).

Subsec. (*l*). Pub. L. 91-113, § 3(b), added the definition of the term "combustible" and expanded references to "flammability" and "flammable" to include "combustiblity" and "combustible", respectively.

Subsec. (p)(1)(E). Pub. L. 91-113, § 3(c), added "Combustible" to the enumerated affirmative statements of the principal hazard or hazards required to be stated on the label of a hazardous substance.

Subsec. (q)(1). Pub. L. 91-113, § 2(c); added "or necessarily present an electrical, mechanical, or thermal hazard" following "hazardous substance involved".

Subsecs. (r) to (t). Pub. L. 91-113, § 2(d), added subsecs. (r) to (t).

1966—Subsec. (f). Pub. L. 89-756, § 2(a), provided that "hazardous substances" shall apply to any article which is not itself an economic poison within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazard substance within the meaning of par. (1) of this subsec. by reason of its bearing or containing an economic poison.

Subsec. (n). Pub. L. 89-756, § 2(b), enlarged the term "label" to include, where the article is unpackaged or is packaged in an immediate container not intended or suitable for delivery to the ultimate consumer, a display of written, printed or graphic matter directly upon the article involved or upon a tag or other suitable material affixed thereto.

Subsec. (p). Pub. L. 89-756, § 2(c), in the introductory material preceding par. (1) substituted "misbranded hazardous substance" for "misbranded package" and "misbranded package of a hazardous substance" and as so retermed enlarged applicability to include toys and other articles intended for use by children, which are hazardous substances, or which bear or contain hazardous substances when susceptible of access by children, and in par. (1), clause (J) added further category of "misbranded hazardous substance" where the article is intended for use by children and is not a banned hazardous substance and fails to bear a label with adequate directions for the protection of children from the hazard.

Subsec. (q). Pub. L. 89-756, § 3(a), added subsec. (q).

Effective Date of 1972 Amendment

Amendment by Pub. L. 92-516 effective at the close of Oct. 21, 1972, except if regulations are necessary for the implementation of any provision that becomes effective on Oct. 21, 1972, and continuation in effect of subchapter I of chapter 6 of title 7, and regulations thereunder, relating to the control of economic poisons, as in existence prior to Oct. 21, 1972, until superseded by provisions of Pub. L. 92-516 and regulations thereunder, see section 4 of Pub. L. 92-516, set out as a note under section 136 of Title 7, Agriculture.

Effective Date of 1970 Amendment

Amendment by Pub. L. 91-601 effective Dec. 30, 1970, and regulations establishing special packaging standards effective no sooner than 180 days or later than one year from date regulations are final, or an earlier date published in Federal Register, see section 9 of Pub. L. 91-601, set out as a note under section 1471 of this title.

Effective Date of 1969 Amendment

Section 5 of Pub. L. 91-113 provided that: "The amendments made by this Act [which enacted section 1274 of this title, amended this section and section 1262 of this title, enacted provisions set out as notes under this section, and amended provisions set out as notes under this section and section 401 of this title] shall take effect on the sixtieth day following the date of the enactment of this Act [Nov. 6, 1969]."

Effective Date

Pub. L. 86-613, § 17, formerly § 16, July 12, 1960, 74 Stat. 380, renumbered Pub. L. 91-113, § 4(a), Nov. 6, 1969, 83 Stat. 189, provided that: "This Act [adding this chapter and repealing sections 401 to 411 of this title] shall take effect upon the date of its enactment [July 12, 1960]; but no penalty or condemnation shall be enforced for any violation of this Act which occurs—

"(a) prior to the expiration of the sixth calendar month after the month in which this Act is enacted [July 1960], or

"(b) prior to the expiration of such additional period or periods, ending not more than eighteen months after the month of enactment of this Act [July 1960], as the Secretary may prescribe on the basis of a finding that conditions exist which necessitate the prescribing of such additional period or periods: *Provided*, That the Secretary may limit the application of such additional period or periods to violations related to specified provisions of this Act, or to specified kinds of hazardous substances or packages thereof."

SHORT TITLE OF 1969 AMENDMENT

Section 1 of Pub. L. 91-113 provided that: "This Act [which enacted section 1274 of this title, amended this section and section 1262 of this title, enacted provisions set out as notes under this section, and amended provisions set out as notes under this section and section 401 of this title] may be cited as the 'Child Protection and Toy Safety Act of 1969'."

SHORT TITLE OF 1966 AMENDMENT

Section 1 of Pub. L. 89-756 provided that: "This title [which amended this section and sections 1262, 1263, 1264, 1265, 1273, and note set out under this section] may be cited as the 'Child Protection Act of 1966'."

SHORT TITLE

Section 1 of Pub. L. 86-613, as amended by section 5 of Pub. L. 89-756, provided that Pub. L. 86-613, which added this chapter, repealed sections 401 to 411 of this title, and enacted notes set out under this section, may be cited as the "Federal Hazardous Substances Act".

SEPARABILITY OF PROVISIONS

Pub. L. 86-613, § 16, formerly § 15, July 12, 1960, 74 Stat. 380, renumbered Pub. L. 91-113, § 4(a), Nov. 6, 1969, 83 Stat. 189, provided that: "If any provision of this Act [adding this chapter and repealing sections 401 to 411 of this title] is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Act and the applicability thereof to other persons and circumstances shall not be affected thereby."

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

The Atomic Energy Commission was abolished and all functions of the Commission, the Chairman, the members of the Commission, and the officers and components of the Commission were transferred to and vested in the Administrator of the Energy Research and Development Administration, with certain exceptions by Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233. See section 5814 of Title 42, The Public Health and Welfare.

EFFECT UPON FEDERAL AND STATE LAW

Pub. L. 86-613, § 18, formerly § 17, July 12, 1960, 74 Stat. 380, as amended Pub. L. 89-756, § 4(a), Nov. 3, 1966, 80 Stat. 1305; renumbered and amended Pub. L. 91-113, § 4(a), (b)(1), Nov. 6, 1969, 83 Stat. 190; Pub. L. 94-284, § 17(a), May 11, 1976, 90 Stat. 510, provided that:

"(a) Nothing in this act [adding this chapter and repealing sections 401 to 411 of this title] shall be construed to modify or affect the provisions of the Flammable Fabrics Act, as amended (15 U.S.C. 1191 to 1200) [sections 1191 to 1204 of this title], or any regulations promulgated thereunder; or of chapter 39, title 18, United States Code, as amended (18 U.S.C. 831 et seq.), or any regulations promulgated thereunder or under sections 204(a)(2) and 204(a) (see H.J. Res. (3) of the Interstate Commerce Act, as amended [section 304(a)(2), (3) of Title 49, Transportation] (relating to the transportation of dangerous substances and explosives by surface carriers); or of section 1716, title 18, United States Code, or any regulations promulgated thereunder (relating to mailing of dangerous substances); or of section 902 [section 1472 of title 49] or regulations promulgated under section 601 of the Federal Aviation Act of 1958 [section 1421 of title 49] (relating to transportation of dangerous substances and explosives in aircraft); or of the Federal Food, Drug, and Cosmetic Act [chapter 9 of Title 21, Food and Drugs]; or of the Public Health Service Act [chapter 6A of Title 42, The Public Health and Welfare]; or of the Federal Insecticide, Fungicide, and Rodenticide Act [now section 136 et seq. of title 7]; or of the Dangerous Drug Act for the District of Columbia (70 Stat. 612), or the Act entitled 'An Act to regulate the practice of pharmacy and the sale of poisons in the District of Columbia, and for other purposes', approved May 7, 1906 (34 Stat. 175), as amended; or of any other Act of Congress, except as specified in section 19 [set out as a note under sections 401 to 411 of this title].

"(b)(1)(A) Except as provided in paragraphs (2) and (3), if a hazardous substance or its packaging is subject to a cautionary labeling requirement under section 2(p) or 3(b) [subsec. (p) of this section or section 1262(b) of this title] designed to protect against a risk of illness or injury associated with the substance, no State or political subdivision of a State may establish or continue in effect a cautionary labeling requirement applicable to such substance or packaging and designed to protect against the same risk of illness or injury unless such cautionary labeling requirement is identical to the labeling requirement under section 2(p) or 3(b) [subsec. (p) of this section or section 1262(b) of this title].

"(B) Except as provided in paragraphs (2), (3), and (4), if under regulations of the Commission promulgated under or for the enforcement of section 2(q) [subsec. (q) of this section] a requirement is established to protect against a risk of illness or injury associated with a hazardous substance, no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations.

"(2) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a requirement applicable to a hazardous substance for its own use (or to the packaging of such a substance) which requirement is designed to protect against a risk of illness or injury associated with such substance and which is not identical to a requirement described in paragraph (1) applicable to such substance (or packaging) and designed to protect against the same risk of illness or injury if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1).

"(3)(A) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with subparagraph (B), exempt from paragraph (1), under such conditions as may be prescribed in such regulation, any requirement of such State or political subdivision designed to protect against a risk of illness or injury associated with a hazardous substance if—

"(i) compliance with the requirement would not cause the hazardous substance (or its packaging) to be in violation of the applicable requirement described in paragraph (1), and

"(ii) the State or political subdivision requirement (I) provides a significantly higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1), and (II) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision requirement on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such requirement, the cost of complying with such requirement, the geographic distribution of the substance to which the requirement would apply, the probability of other States or political subdivisions applying for an exemption under this paragraph for a similar requirement, and the need for a national, uniform requirement under this Act [this chapter] for such substance (or its packaging).

"(B) A regulation under subparagraph (A) granting an exemption for a requirement of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

"(4) Paragraph (1)(B) does not prohibit a State or a political subdivision of a State from establishing or continuing in effect a requirement which is designed to protect against a risk of illness or injury associated with fireworks devices or components thereof and which provides a higher degree of protection from such risk of illness or injury than a requirement in effect under a regulation of the Commission described in such paragraph.

"(5) As used in this subsection, the term 'Commission' means the Consumer Product Safety Commission."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1262, 1471, 2076 of this title.

§ 1262. Declaration of hazardous substances

(a) Declaration of hazardous substances by regulation; review

(1) Whenever in the judgment of the Secretary such action will promote the objectives of this chapter by avoiding or resolving uncertainty as to its application, the Secretary may by regulation declare to be a hazardous substance, for the purposes of this chapter, any substance or mixture of substances which he finds meets the requirements of subparagraph (1)(A) of section 1261(f) of this title.

(2) Proceedings for the issuance, amendment, or repeal of regulations under this subsection and the admissibility of the record of such proceedings in other proceedings, shall in all respects be governed by the provisions of section 371(e), (f), and (g) of title 21, except that—

(A) the Secretary's order after public hearing (acting upon objections filed to an order made prior to hearing) shall be subject to the requirements of section 348(f)(2) of title 21; and

(B) the scope of judicial review of such order shall be in accordance with the fourth sentence of paragraph (2), and with the provisions of paragraph (3) of section 348(g) of title 21.

(b) Reasonable variations or additional label requirements

If the Secretary finds that the requirements of section 1261(p)(1) of this title are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance, he may by regulation establish such reasonable variations or additional label requirements as he finds necessary for the protection of the public health and safety; and any such hazardous substance intended, or packaged in a form suitable, for use in the household or by children, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded hazardous substance.

(c) Exemption from requirements by regulation

If the Secretary finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this chapter is impracticable or is not necessary for the adequate protection of the public health and safety, the Secretary shall promulgate regulations exempting such substance from these requirements to the extent he determines to be consistent with adequate protection of the public health and safety.

(d) Exemption from requirements of this chapter of substances or containers adequately regulated by other provisions of law

The Secretary may exempt from the requirements established by or pursuant to this chapter any hazardous substance or container of a hazardous substance with respect to which he finds that adequate requirements satisfying the purposes of this chapter have been established by or pursuant to any other Act of Congress.

(e) Regulation of toys or articles intended for use by children

(1) A determination by the Secretary that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard shall be made by regulation in accordance with the procedures prescribed by section 553 (other than clause (B) of the last sentence of subsection (b) of such section) of title 5 unless the Secretary elects the procedures prescribed by subsection (e) of section 371 of title 21, in which event such subsection and subsections (f) and (g) of such section 371 of title 21 shall apply to the making of such determination. If the Secretary makes such election, he shall publish that fact with the proposal required to be published under paragraph (1) of such subsection (e).

(2) If, before or during a proceeding pursuant to paragraph (1) of this subsection, the Secretary finds that, because of an electrical, mechanical, or thermal hazard, distribution of the toy or other article involved presents an imminent hazard to the public health and he, by order published in the Federal Register, gives notice of such finding, such toy or other article shall be deemed to be a banned hazardous substance for purposes of this chapter until the proceeding has been completed. If not yet initiated when such order is published, such a proceeding shall be initiated as promptly as possible.

(3)(A) In the case of any toy or other article intended for use by children which is determined by the Secretary, in accordance with section 553 of title 5, to present an electrical, mechanical, or thermal hazard, any person who will be adversely affected by such a determination may, at any time prior to the 60th day after the regulation making such determination is issued by the Secretary, file a petition with the United States Court of Appeals for the circuit in which such person resides or has his principal place of business for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary shall file in the court the record of the proceedings on which the Secretary based his determination, as provided in section 2112 of title 28.

(B) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there was no opportunity to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(C) Upon the filing of the petition under this paragraph, the court shall have jurisdiction to review the determination of the Secretary in accordance with subparagraphs (A), (B), (C), and (D), of paragraph (2) of the second sentence of section 706 of title 5. If the court ordered additional evidence to be taken under subparagraph (B) of this paragraph, the court shall also review the Secretary's determination to determine if, on the basis of the entire record before the court pursuant to subparagraphs (A) and (B) of this paragraph, it is supported by substantial evidence. If the court finds the determination is not so supported, the court may set it aside. With respect to any determination reviewed under this paragraph, the court may grant appropriate relief pending conclusion of the review proceedings, as provided in section 705 of title 5.

(D) The judgment of the court affirming or setting aside, in whole or in part, any such determination of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(Pub. L. 86-613, § 3, July 12, 1960, 74 Stat. 375; Pub. L. 89-756, § 2(d), (e), Nov. 3, 1966, 80 Stat. 1303, 1304; Pub. L. 91-113, § 2(b), Nov. 6, 1969, 83 Stat. 187.)

AMENDMENTS

1969—Subsec. (e). Pub. L. 91-113 added subsec. (e).

1966—Subsec. (b). Pub. L. 89-756, § 2(d), substituted "any such hazardous substance intended, or packaged in a form suitable, for use in the household or by children, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded hazardous substance" for "any container of such hazardous substance, intended or suitable for household use, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded package of a hazardous substance".

Subsec. (d). Pub. L. 89-756, § 2(e), inserted "hazardous substance or" preceding "container of a hazardous substance".

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-113 effective on the sixtieth day following Nov. 6, 1969, see section 5 of Pub. L. 91-113, set out as a note under section 1261 of this title.

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

NATIONAL COMMISSION ON PRODUCT SAFETY

Pub. L. 90-146, Nov. 20, 1967, 81 Stat. 466, as amended by Pub. L. 91-51, Aug. 4, 1969, 83 Stat. 86, established a National Commission on Product Safety to study and investigate the scope and adequacy of measures to protect consumers against unreasonable risk of injuries which may be caused by hazardous household products and required the Commission to transmit its final report to the President and to the Congress by June 30, 1970. Ninety days after submission of its final report the Commission ceased to exist by the express terms of Pub. L. 90-146.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1261, 2076 of this title.

§ 1263. Prohibited acts

The following acts and the causing thereof are prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any misbranded hazardous substance or banned hazardous substance.

(b) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of, or the doing of any other act with respect to, a hazardous substance, if such act is done while the substance is in interstate commerce, or while the substance is held for sale (whether or not the first sale) after shipment in interstate commerce, and results in the hazardous substance being a misbranded hazardous substance or banned hazardous substance.

(c) The receipt in interstate commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise.

(d) The giving of a guarantee or undertaking referred to in section 1264(b)(2) of this title which guarantee or undertaking is false, except by a person who relied upon a guarantee or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance.

(e) The failure to permit entry or inspection as authorized by section 1270(b) of this title or to permit access to and copying of any record as authorized by section 1271 of this title.

(f) The introduction or delivery for introduction into interstate commerce, or the receipt in interstate commerce and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification. The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded hazardous substance. As used in this paragraph, the terms "food", "drug", and "cosmetic" shall have the same meanings as in the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(g) The manufacture of a misbranded hazardous substance or banned hazardous substance within the District of Columbia or within any territory not organized with a legislative body.

(h) The use by any person to his own advantage, or revealing other than to the Secretary or officers or employees of the Department, or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under authority of section 1270 of this title concerning any method of process which as a trade secret is entitled to protection.

(Pub. L. 86-613, § 4, July 12, 1960, 74 Stat. 375; Pub. L. 89-756, §§ 2(f), 3(b), Nov. 3, 1966, 80 Stat. 1304, 1305.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in par. (f), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables volume.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-756, §§ 2(f)(1), 3(b), substituted "misbranded hazardous substance or banned hazardous substance" for "misbranded package of a hazardous substance".

Subsec. (b). Pub. L. 89-756, §§ 2(f)(2), 3(b), substituted "being a misbranded hazardous substance or banned hazardous substance" for "being in a misbranded package".

Subsec. (c). Pub. L. 89-756, §§ 2(f)(1), 3(b), substituted "misbranded hazardous substance or banned hazardous substance" for "misbranded package of a hazardous substance".

Subsec. (f). Pub. L. 89-756, § 2(f)(2), substituted "being a misbranded hazardous substance" for "being in a misbranded package".

Subsec. (g). Pub. L. 89-756, §§ 2(f)(1), 3(b), substituted "misbranded hazardous substance or banned hazardous substance" for "misbranded package of a hazardous substance".

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1264, 1265, 1273 of this title.

§ 1264. Penalties; exceptions

(a) Any person who violates any of the provisions of section 1263 of this title shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than $500 or to imprisonment for not more than ninety days, or both; but for offenses committed with intent to defraud or mislead, or for second and subsequent offenses, the penalty shall be imprisonment for not more than one year, or a fine of not more than $3,000, or both such imprisonment and fine.

(b) No person shall be subject to the penalties of subsection (a) of this section, (1) for having violated section 1263(c) of this title, if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith, unless he refuses to furnish on request of an officer or employee duly designated by the Secretary, the name and address of the person from whom he purchased or received such hazardous substance, and copies of all documents, if any there be, pertaining to the delivery of the hazardous substance to him; or (2) for having violated section 1263(a) of this title, if he established a guarantee or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance, to the effect that the hazardous substance is not a misbranded hazardous substance or a banned hazardous substance within the meaning of those terms in this chapter; or (3) for having violated subsection (a) or (c) of section 1263 of this title in respect of any hazardous substance shipped or delivered for shipment for export to any foreign country, in a package marked for export on the outside of the shipping container and labeled in accordance with the specifications of the foreign purchaser and in accordance with the laws of the foreign country, but if such hazardous substance is sold or offered for sale in domestic commerce, this clause shall not apply.

(Pub. L. 86-613, § 5, July 12, 1960, 74 Stat. 376; Pub. L. 89-756, §§ 2(g), 3(c), Nov. 3, 1966, 80 Stat. 1304, 1305.)

AMENDMENTS

1966—Subsec. (b). Pub. L. 89-756 substituted "a misbranded hazardous substance or a banned hazardous substance within the meaning of those terms" for "in misbranded packages within the meaning of that term".

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1263 of this title.

§ 1265. Seizures

(a) Grounds and jurisdiction

Any misbranded hazardous substance or banned hazardous substance when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of section 1263(f) of this title, be introduced into interstate commerce, or which has been manufactured in violation of section 1263(g) of this title, shall be liable to be proceeded against while in interstate commerce or at any time thereafter, on libel of information and condemned in any district court in the United States within the jurisdiction of which the hazardous substance is found: *Provided*, That this section shall not apply to a hazardous substance intended for export to any foreign country if it (1) is in a package branded in accordance with the specifications of the foreign purchaser, (2) is labeled in accordance with the laws of the foreign country, and (3) is labeled on the outside of the shipping package to show that it is intended for export, and (4) is so exported.

(b) Procedure; multiplicity of pending proceedings

Such hazardous substance shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury. When libel for condemnation proceedings under this section, involving the same claimant and the same issues of misbranding, are pending in two or more jurisdictions, such pending proceedings, upon application of the United States or the claimant seasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the applicant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the United States or the claimant may apply to the court of one such jurisdiction, and such court (after giving the other party, the claimant, or the United States attorney for such district, reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.

(c) Disposition of goods after decree of condemnation

Any hazardous substance condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such hazardous substance shall not be sold under such decree contrary to the provisions of this chapter or the laws of the jurisdiction in which sold: *Provided,* That, after entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such hazardous substance shall not be sold or disposed of contrary to the provisions of this chapter or the laws of any State or territory in which sold, the court may by order direct that such hazardous substance be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this chapter under the supervision of an officer or employee duly designated by the Secretary, and the expense of such supervision shall be paid by the person obtaining release of the hazardous substance under bond.

(d) Costs and fees

When a decree of condemnation is entered against the hazardous substance, court costs and fees, and storage and other proper expenses, shall be awarded against the person, if any, intervening as claimant of the hazardous substance.

(e) Removal of case for trial

In the case of removal for trial of any case as provided by subsection (b) of this section—

(1) the clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction;

(2) the court to which such case is removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed.

(Pub. L. 86-613, § 6, July 12, 1960, 74 Stat. 376; Pub. L. 89-756, §§ 2(h), 3(d), Nov. 3, 1966, 80 Stat. 1304, 1305.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-756 substituted "Any misbranded hazardous substance or banned hazardous substance" for "Any hazardous substance that is in a misbranded package".

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

§ 1266. Hearing before report of criminal violation

Before any violation of this chapter is reported by the Secretary to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding.

(Pub. L. 86-613, § 7, July 12, 1960, 74 Stat. 377.)

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

§ 1267. Injunctions; criminal contempt; trial by court or jury

(a) The United States district courts and the United States courts of the territories shall have jurisdiction, for cause shown and subject to the provisions of rule 65(a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this chapter.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this chapter, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(Pub. L. 86-613, § 8, July 12, 1960, 74 Stat. 378.)

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Generally, see Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL RULES OF CRIMINAL PROCEDURE

Generally, see Title 18, Appendix, Crimes and Criminal Procedure.

§ 1268. Proceedings in name of United States; subpenas

All criminal proceedings and all libel or injunction proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the United States. Subpenas for witnesses who are required to attend a court of the United States in any district may run into any other district in any such proceeding.

(Pub. L. 86-613, § 9, July 12, 1960, 74 Stat. 378.)

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

§ 1269. Regulations

(a) The authority to promulgate regulations for the efficient enforcement of this chapter, except as otherwise provided in this section, is vested in the Secretary.

(b) The Secretary of the Treasury and the Secretary of Health, Education, and Welfare shall jointly prescribe regulations for the efficient enforcement of the provisions of section 1273 of this title, except as otherwise provided therein. Such regulations shall be promulgated in such manner and take effect at such time, after due notice, as the Secretary of Health, Education, and Welfare shall determine.

(Pub. L. 86-613, § 10, July 12, 1960, 74 Stat. 378.)

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

§ 1270. Examinations and investigations

(a) Authority to conduct

The Secretary is authorized to conduct examinations, inspections, and investigations for the purposes of this chapter through officers and employees of the Department or through any health officer or employee of any State, territory, or political subdivision thereof, duly commissioned by the Secretary as an officer of the Department.

(b) Inspection; notice; samples

For purposes of enforcement of this chapter, officers or employees duly designated by the Secretary, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into interstate commerce or are held after such introduction, or to enter any vehicle being used to transport or hold such hazardous substances in interstate commerce; (2) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle, and all pertinent equipment, finished and unfinished materials, and labeling therein; and (3) to obtain samples of such materials or packages thereof, or of such labeling. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness.

(c) Receipt for sample; results of analysis

If the officer or employee obtains any sample, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained. If an analysis is made of such sample, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(Pub. L. 86-613, § 11, July 12, 1960, 74 Stat. 378.)

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1263 of this title.

§ 1271. Records of interstate shipment

For the purpose of enforcing the provisions of this chapter, carriers engaged in interstate commerce, and persons receiving hazardous substances in interstate commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the Secretary, permit such officer or employee, at reasonable times, to have access to and to copy all records showing the movement in interstate commerce of any such hazardous substance, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates: *Provided,* That evidence obtained under this section, or any evidence which is directly or indirectly derived from such evidence, shall not be used in a criminal prosecution of the person from whom obtained: *Provided further,* That carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of hazardous substances in the usual course of business as carriers.

(Pub. L. 86-613, § 12, July 12, 1960, 74 Stat. 379; Pub. L. 91-452, title II, § 219, Oct. 15, 1970, 84 Stat. 929.)

AMENDMENTS

1970—Pub. L. 91-452 added ", or any evidence which is directly or indirectly derived from such evidence," following "under this section".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

CROSS REFERENCES

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1263 of this title.

§ 1272. Publicity; reports; dissemination of information

(a) The Secretary may cause to be published from time to time reports summarizing any judgments, decrees, or court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(b) The Secretary may also cause to be disseminated information regarding hazardous substances in situations involving, in the opinion of the Secretary, imminent danger to health. Nothing in this section shall be construed to prohibit the Secretary from collecting, reporting, and illustrating the results of the investigations of the Department.

(Pub. L. 86-613, § 13, July 12, 1960, 74 Stat. 379.)

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

§ 1273. Imports

(a) Delivery of samples to Secretary of Health, Education, and Welfare; examination; refusal of admission

The Secretary of the Treasury shall deliver to the Secretary of Health, Education, and Welfare, upon his request, samples of hazardous substances which are being imported or offered for import into the United States, giving notice thereof to the owner or consignee, who may appear before the Secretary of Health, Education, and Welfare and have the right to introduce testimony. If it appears from the examination of such samples or otherwise that such hazardous substance is a misbranded hazardous substance or banned hazardous substance or in violation of section 1263(f) of this title, then such hazardous substance shall be refused admission, except as provided in subsection (b) of this section. The Secretary of the Treasury shall cause the destruction of any such hazardous substance refused admission unless such hazardous substance is exported, under regulations prescribed by the Secretary of the Treasury, within ninety days of the date of notice of such refusal or within such additional time as may be permitted pursuant to such regulations.

(b) Disposition of refused articles

Pending decision as to the admission of a hazardous substance being imported or offered for import, the Secretary of the Treasury may authorize delivery of such hazardous substance to the owner or consignee upon the execution by him of a good and sufficient bond providing for the payment of such liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of the Treasury. If it appears to the Secretary of Health, Education, and Welfare that the hazardous substance can, by relabeling or other action, be brought into compliance with this chapter, final determination as to admission of such hazardous substance may be deferred and, upon filing of timely written application by the owner or consignee and the execution by him of a bond as provided in the preceding provisions of this subsection, the Secretary may, in accordance with regulations, authorize the applicant to perform such relabeling or other action specified in such authorization (including destruction or export of rejected hazardous substances or portions thereof, as may be specified in the Secretary's authorization). All such relabeling or other action pursuant to such authorization shall, in accordance with regulations, be under the supervision of an officer or employee of the Department of Health, Education, and Welfare designated by the Secretary, or an officer or employee of the Department of the Treasury designated by the Secretary of the Treasury.

(c) Expenses in connection with refused articles

All expenses (including travel, per diem, or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in subsection (a) of this section and the supervision of the relabeling or other action authorized under the provisions of subsection (b) of this section, the amount of such expenses to be determined in accordance with regulations, and all expenses in connection with the storage, cartage, or labor with respect to any hazardous substance refused admission under subsection (a) of this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

(Pub. L. 86-613, § 14, July 12, 1960, 74 Stat. 379; Pub. L. 89-756, §§ 2(i), 3(e), Nov. 3, 1966, 80 Stat. 1304, 1305.)

AMENDMENTS

1966—Subsec. (a). Pub. L. 89-756 substituted "a misbranded hazardous substance or banned hazardous substance" for "in misbranded packages".

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1269 of this title.

§ 1274. Repurchase of banned hazardous substances; procedure; definitions

(a) In the case of any article or substance sold by its manufacturer, distributor, or dealer which is a banned hazardous substance (whether or not it was such at the time of its sale), such article or substance shall, in accordance with regulations of the Secretary, be repurchased as follows:

(1) The manufacturer of any such article or substance shall repurchase it from the person to whom he sold it, and shall—

(A) refund that person the purchase price paid for such article or substance,

(B) if that person has repurchased such article or substance pursuant to paragraph (2) or (3), reimburse him for any amounts paid in accordance with that paragraph for the return of such article or substance in connection with its repurchase, and

(C) if the manufacturer requires the return of such article or substance in connection with his repurchase of it in accordance with this paragraph, reimburse that person for any reasonable and necessary expenses incurred in returning it to the manufacturer.

(2) The distributor of any such article or substance shall repurchase it from the person to whom he sold it, and shall—

(A) refund that person the purchase price paid for such article or substance,

(B) if that person has repurchased such article or substance pursuant to paragraph (3), reimburse him for any amounts paid in accordance with that paragraph for the return of such article or substance in connection with its repurchase, and

(C) if the distributor requires the return of such article or substance in connection with his repurchase of it in accordance with this subparagraph, reimburse that person for any reasonable and necessary expenses incurred in returning it to the distributor.

(3) In the case of any such article or substance sold at retail by a dealer, if the person who purchased it from the dealer returns it to him, the dealer shall refund the purchaser the purchase price paid for it and reimburse him for any reasonable and necessary transportation charges incurred in its return.

(b) For the purposes of this section, (1) the term "manufacturer" includes an importer for resale, and (2) a dealer who sells at wholesale an article or substance shall with respect to that sale be considered the distrubutor of that article or substance.

(Pub. L. 86-613, § 15, as added Pub. L. 91-113, § 4(a), Nov. 6, 1969, 83 Stat. 189.)

EFFECTIVE DATE

Section effective on the sixtieth day following Nov. 6, 1969, see section 5 of Pub. L. 91-113, set out as a note under section 1261 of this title.

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

CHAPTER 31—DESTRUCTION OF PROPERTY MOVING IN COMMERCE

Sec.
1281. Destruction of property.
    (a) Property in possession of common or contract carrier.
    (b) Penalty.
    (c) Proof of interstate nature of property.
1282. State prosecutions.

§ 1281. Destruction of property

(a) Property in possession of common or contract carrier

It shall be unlawful for any person willfully to destroy or injure any property moving in interstate or foreign commerce in the possession of a common or contract carrier by railroad, motor vehicle, or aircraft, or willfully to attempt to destroy or injure any such property.

(b) Penalty

Whoever violates any provision of subsection (a) of this section shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

(c) Proof of interstate nature of property

To establish the interstate or foreign commerce character of any property involved in any prosecution under this section, the waybill or similar shipping document of such property shall be prima facie evidence of the place from which and to which such property was moving.

(Pub. L. 87-221, § 1, Sept. 13, 1961, 75 Stat. 494.)

CROSS REFERENCES

Aircraft and motor vehicles—
    Destruction of aircraft or aircraft facilities, see section 32 of Title 18, Crimes and Criminal Procedure.
    Destruction of motor vehicles or motor vehicle facilities, see section 33 of Title 18.
Embezzlement and theft—
    Carrier's funds derived from commerce; state prosecutions, see section 660 of Title 18.
    Interstate or foreign baggage, express or freight; state prosecutions, see section 659 of Title 18.
Malicious mischief, interference with foreign commerce by violence, see section 1364 of Title 18.
Railroads—
    Entering train to commit crime, see section 1991 of Title 18.
    Wrecking trains; state prosecutions, see section 1992 of Title 18.
Robbery and burglary; railroad car entered or seal broken; state prosecutions, see section 2117 of Title 18.
Shipping—
    Breaking and entering vessel, see section 2276 of Title 18.
    Firing or tampering with vessels, see section 2275 of Title 18.

§ 1282. State prosecutions

A judgment of conviction or acquittal on the merits under the laws of any State or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, shall be a bar to any prosecution under this chapter for the same act or acts.

(Pub. L. 87-221, § 2, Sept. 13, 1961, 75 Stat. 494.)

CHAPTER 32—TELECASTING OF PROFESSIONAL SPORTS CONTESTS

Sec.
1291. Exemption from antitrust laws of agreements covering the telecasting of sports contests and the combining of professional football leagues
1292. Area telecasting restriction limitation.
1293. Intercollegiate and interscholastic football contest limitations.
1294. Antitrust laws unaffected as regards to other activities of professional sports contests.
1295. "Persons" defined.

§ 1291. Exemption from antitrust laws of agreements covering the telecasting of sports contests and the combining of professional football leagues

The antitrust laws, as defined in section 1 of the Act of October 15, 1914, as amended (38 Stat. 730) [15 U.S.C. 12], or in the Federal Trade Commission Act, as amended (38 Stat. 717) [15 U.S.C. 41 et seq.], shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sports of football, baseball, basketball, or hockey, by which any league of clubs participating in professional football, baseball, basketball, or hockey contests sells or otherwise transfers all or any part of the rights of such league's member clubs in the sponsored telecasting of the games of football, baseball, basketball, or hockey, as the case may be, engaged in or conducted by such clubs. In addition, such laws shall not apply to a joint agreement by which the member clubs of two or more professional football leagues, which are exempt from income tax under section 501(c)(6) of the Internal Revenue Code of 1954 [26 U.S.C. 501(c)(6)], combine their operations in expanded single league so exempt from income tax, if such agreement increases rather than decreases the number of professional football clubs so operating, and the provisions of which are directly relevant thereto.

(Pub. L. 87-331, § 1, Sept. 30, 1961, 75 Stat. 732; Pub. L. 89-800, § 6(b)(1), Nov. 8, 1966, 80 Stat. 1515.)

References in Text

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

Amendments

1966—Pub. L. 89-800 extended the exemption from antitrust laws to include a joint agreement by which the member clubs of two or more professional football leagues combine their operations in an expanded single league.

Savings Provision

Section 6 of Pub. L. 87-331 provided that: "Nothing in this Act [this chapter] shall affect any cause of action existing on the effective date hereof [Sept. 30, 1961] in respect to the organized professional team sports of baseball, football, basketball, or hockey."

Cross References

Federal Trade Commission Act, definition of antitrust acts, see section 44 of this title.

Intercollegiate and interscholastic football contest, applicability to agreements limiting, see section 1293 of this title.

Joint agreements prohibiting area telecasting, applicability to, see section 1292 of this title.

Professional sports contests, applicability to agreements concerning other activities, see section 1294 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1292, 1293, 1294 of this title.

§ 1292. Area telecasting restriction limitation

Section 1291 of this title shall not apply to any joint agreement described in the first sentence in such section which prohibits any person to whom such rights are sold or transferred from televising any games within any area, except within the home territory of a member club of the league on a day when such club is playing a game at home.

(Pub. L. 87-331, § 2, Sept. 30, 1961, 75 Stat. 732; Pub. L. 89-800, § 6(b)(2), Nov. 8, 1966, 80 Stat. 1515.)

Amendments

1966—Pub. L. 89-800 substituted "described in the first sentence of such section" for "described in such section".

§ 1293. Intercollegiate and interscholastic football contest limitations

The first sentence of section 1291 of this title shall not apply to any joint agreement described in such section which permits the telecasting of all or a substantial part of any professional football game on any Friday after six o'clock postmeridian or on any Saturday during the period beginning on the second Friday in September and ending on the second Saturday in December in any year from any telecasting station located within seventy-five miles of the game site of any intercollegiate or interscholastic football contest scheduled to be played on such a date if—

(1) such intercollegiate football contest is between institutions of higher learning both of which confer degrees upon students following completion of sufficient credit hours to equal a four-year course, or

(2) in the case of an interscholastic football contest, such contest is between secondary schools, both of which are accredited or certified under the laws of the State or States in which they are situated and offer courses continuing through the twelfth grade of the standard school curriculum, or the equivalent, and

(3) such intercollegiate or interscholastic football contest and such game site were announced through publication in a newspaper of general circulation prior to August 1 of

such year as being regularly scheduled for such day and place.

(Pub. L. 87-331, § 3, Sept. 30, 1961, 75 Stat. 732; Pub. L. 89-800, § 6(b)(3), Nov. 8, 1966, 80 Stat. 1515.)

AMENDMENTS

1966—Pub. L. 89-800 substituted "The first sentence of section 1291 of this title" for "Section 1291 of this title" at the beginning of the section, extended the limitation granted for football contests on game sites located within 75 miles of telecasting stations to include interscholastic contests, redesignated clause (2) as clause (3), added a new clause (2), and, in clause (3) as so redesignated, substituted "newspaper of general circulation prior to August 1" for "daily newspaper of general circulation prior to March 1" as the description of the type newspaper required for the announcement of the game site of intercollegiate or interscholastic football games.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 47 section 331.

§ 1294. Antitrust laws unaffected as regards to other activities of professional sports contests

Nothing contained in this chapter shall be deemed to change, determine, or otherwise affect the applicability or nonapplicability of the antitrust laws to any act, contract, agreement, rule, course of conduct, or other activity by, between, or among persons engaging in, conducting, or participating in the organized professional team sports of football, baseball, basketball, or hockey, except the agreements to which section 1291 of this title shall apply.

(Pub. L. 87-331, § 4, Sept. 30, 1961, 75 Stat. 732.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are classified generally to chapter 1 (§ 1 et seq.) of this title.

§ 1295. "Persons" defined

As used in this chapter, "persons" means any individual, partnership, corporation, or unincorporated association or any combination or association thereof.

(Pub. L. 87-331, § 5, Sept. 30, 1961, 75 Stat. 732.)

CHAPTER 33—BRAKE FLUID REGULATION

§§ 1301 to 1303. Repealed. Pub. L. 89-563, title I, § 117(a), Sept. 9, 1966, 80 Stat. 727

Sections, Pub. L. 87-637, §§ 1 to 3, Sept. 5, 1962, 76 Stat. 437, provided for the promulgation of standards for hydraulic brake fluid used in motor vehicles and set the penalty for the unlawful sale, importation, or introduction into commerce of fluid not meeting the published standards. See chapter 38 (§ 1381 et seq.) of this title.

SAVINGS PROVISIONS

Section 117(b) to (e) of Pub. L. 89-563 provided that:

"(b) Whoever, prior to the date of enactment of this section [Sept. 9, 1966], knowingly and willfully violates any provision of law repealed by subsection (a) of this section [repealing sections 1301 to 1303 and 1321 to 1323 of this title] shall be punished in accordance with the provisions of such laws as in effect on the date such violation occurred.

"(c) All standards issued under authority of the laws repealed by subsection (a) of this section [repealing sections 1301 to 1303 and 1321 to 1323 of this title] which are in effect at the time this section takes effect [Sept. 9, 1966] shall continue in effect as if they had been effectively issued under section 103 [section 1392 of this title] until amended or revoked by the Secretary, or a court of competent jurisdiction by operation of law.

"(d) Any proceeding relating to any provision of law repealed by subsection (a) of this section [repealing sections 1301 to 1303 and 1321 to 1323 of this title] which is pending at the time this section takes effect [Sept. 9, 1966] shall be continued by the Secretary as if this section had not been enacted, and orders issued in any such proceeding shall continue in effect as if they had been effectively issued under section 103 [1392 of this title] until amended or revoked by the Secretary in accordance with this title [sections 1391 et seq. of this title], or by operation of law.

"(e) The repeals made by subsection (a) of this section [repealing sections 1301 to 1303 and 1321 to 1323 of this title] shall not affect any suit, action, or other proceeding lawfully commenced prior to the date this section takes effect [Sept. 9, 1966], and all such suits, actions, and proceedings, shall be continued, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if this section had not been enacted. No suit, action, or other proceeding lawfully commenced by or against any agency or officer of the United States in relation to the discharge of official duties under any provision of law repealed by subsection (a) of this section [repealing sections 1301 to 1303 and 1321 to 1323 of this title], shall abate by reason of such repeal, but the court, upon motion or supplemental petition filed at any time within 12 months after the date of enactment of this section [Sept. 9, 1966], showing the necessity for the survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, may allow the same to be maintained."

CHAPTER 34—ANTITRUST CIVIL PROCESS

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 15a of this title; title 18 section 1505; title 42 section 6272; title 50 App. section 2158a.

§ 1311. Definitions

For the purposes of this chapter—

(a) The term "antitrust law" includes:

(1) Each provision of law defined as one of the antitrust laws by section 12 of this title; and

(2) Any statute enacted on and after September 19, 1962, by the Congress which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to any restraint upon or monopolization of interstate or foreign trade or commerce;

(b) The term "antitrust order" means any final order, decree, or judgment of any court of the United States, duly entered in any case or proceeding arising under any antitrust law;

(c) The term "antitrust investigation" means any inquiry conducted by any antitrust investigator for the purpose of ascertaining whether any person is or has been engaged in any antitrust violation or in any activities in preparation for a merger, acquisition, joint venture, or similar transaction, which, if consummated, may result in an antitrust violation;

(d) The term "antitrust violation" means any act or omission in violation of any antitrust law or any antitrust order;

(e) The term "antitrust investigator" means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any antitrust law;

(f) The term "person" means any natural person, partnership, corporation, association, or other legal entity, including any person acting under color or authority of State law;

(g) The term "documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document; and

(h) The term "custodian" means the custodian or any deputy custodian designated under section 1313(a) of this title.

(Pub. L. 87-664, § 2, Sept. 19, 1962, 76 Stat. 548; Pub. L. 94-435, title I, § 101, Sept. 30, 1976, 90 Stat. 1383.)

REFERENCES IN TEXT

This chapter, referred to in opening phrase, in the original read "this Act", meaning Pub. L. 87-664, which is classified generally to this chapter. For complete classification of this Act to the Code, see Tables volume.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-435, § 101(1), in par. (1) inserted "and" following the semicolon preceding par. (2), struck out former par. (2) which included the Federal Trade Commission Act in the definition of antitrust law for purposes of this chapter, redesignated former par. (3) as (2), and as so redesignated, struck out "(A)" preceding "any restraint" and former subpar. (B) which related to any unfair trade practice in or affecting interstate or foreign trade or commerce.

Subsec. (c). Pub. L. 94-435, § 101(2), inserted "or in any activities in preparation for a merger, acquisition, joint venture, or similar transaction, which if consummated, may result in an antitrust violation;" following "engaged in any antitrust violation".

Subsec. (f). Pub. L. 94-435, § 101(3), included "any natural person" and "any person acting under color or authority of State law" in the definition of the term "person".

Subsec. (h). Pub. L. 94-435, § 101(4), substituted "the custodian" for "the antitrust document custodian".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 106 of Pub. L. 94-435 provided that: "The amendments to the Antitrust Civil Process Act [see section 1 of Pub. L. 87-664 set out as a Short Title note under this section] and to section 1505 of title 18, United States Code, made by this title [title I of Pub.L. 94-435] shall take effect on the date of enactment of this Act [Sept. 30, 1976], except section 3(i)(8) of the Antitrust Civil Process Act [section 1312(i)(8) of this title] (as amended by this Act) shall take effect on the later of (1) the date of enactment of this Act [Sept. 30, 1976], or (2) October 1, 1976. Any such amendment which provides for the production of documentary material, answers to interrogatories, or oral testimony shall apply to any act or practice without regard to the date on which it occurred."

SHORT TITLE

Section 1 of Pub. L. 94-435 provided: "That this Act [enacting sections 15c to 15h, 18a, and 66 of this title, amending sections 12, 15b, 16, 26, and 1311 to 1314 of this title, section 1505 of Title 18, Crimes and Criminal Procedure, and section 1407 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 1, 8, 15c, 18a, and 1311 of this title] may be cited as the 'Hart-Scott-Rodino Antitrust Improvements Act of 1976'."

Section 1 of Pub. L. 87-664 provided: "That this Act may be cited as the 'Antitrust Civil Process Act'."

SAVINGS CLAUSE

Section 7 of Pub. L. 87-664 provided that: "Nothing contained in this Act shall impair the authority of the Attorney General, the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, or any antitrust investigator to (a) lay before any grand jury impaneled before any district court of the United States any evidence concerning any alleged antitrust violation, (b) invoke the power of any such court to compel the production of any evidence before any such grand jury, or (c) institute any proceeding for the enforcement of any order or process issued in execution of such power, or to punish disobedience of any such order of process by any person, including a natural person."

§ 1312. Civil investigative demands

(a) Issuance; service; production of material; testimony

Whenever the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information, relevant to a civil antitrust investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying or reproduction, to answer in writing written interrogatories, to give oral testimony concerning documentary material or information, or to furnish any combination of such material, answers, or testimony.

(b) Contents

Each such demand shall—

(1) state the nature of—

(A) the conduct constituting the alleged antitrust violation, or

(B) the activities in preparation for a merger, acquisition, joint venture, or similar transaction, which, if consummated, may result in an antitrust violation,

which are under investigation and the provision of law applicable thereto;

(2) if it is a demand for production of documentary material—

(A) describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available; or

(3) if it is a demand for answers to written interrogatories—

(A) propound with definiteness and certainty the written interrogatories to be answered;

(B) prescribe a date or dates at which time answers to written interrogatories shall be submitted; and

(C) identify the custodian to whom such answers shall be submitted; or

(4) if it is a demand for the giving of oral testimony—

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify an antitrust investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted.

(c) Protected material or information

No such demand shall require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony, if such material, answers, or testimony would be protected from disclosure under—

(1) the standards applicable to subpenas or subpenas duces tecum issued by a court of the United States in aid of a grand jury investigation, or

(2) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this chapter.

(d) Service; jurisdiction

(1) Any such demand may be served by any antitrust investigator, or by any United States marshal or deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

(2) any such demand or any petition filed under section 1314 of this title may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this chapter by such person that such court would have if such person were personally within the jurisdiction of such court.

(e) Service upon legal entities and natural persons

(1) Service of any such demand or of any petition filed under section 1314 of this title may be made upon a partnership, corporation, association, or other legal entity by—

(A) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity to be served; or

(C) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(2) Service of any such demand or of any petition filed under section 1314 of this title may be made upon any natural person by—

(A) delivering a duly executed copy thereof to the person to be served; or

(B) depositing such copy in the United States mails by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(f) Proof of service

A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(g) Sworn certificates

The production of documentary material in response to a demand served pursuant to this section shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(h) Interrogatories

Each interrogatory in a demand served pursuant to this section shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person or persons responsible for answering each interrogatory, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(i) Oral examinations

(1) The examination of any person pursuant to a demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(2) The antitrust investigator or investigators conducting the examination shall exclude from the place where the examination is held all other persons except the person being examined, his counsel, the officer before whom the testimony is to be taken, and any stenographer taking such testimony. The provisions of section 30 of this title shall not apply to such examinations.

(3) The oral testimony of any person taken pursuant to a demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the antitrust investigator conducting the examination and such person.

(4) When the testimony is fully transcribed, the antitrust investigator or the officer shall afford the witness (who may be accompanied by counsel) a reasonable opportunity to examine the transcript; and the transcript shall be read to or by the witness, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the antitrust investigator with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within thirty days of his being afforded a reasonable opportunity to examine it, the officer or the antitrust investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reason, if any, given therefor.

(5) The officer shall certify on the transcript that the witness was duly sworn by him and that the transcript is a true record of the testimony given by the witness, and the officer or antitrust investigator shall promptly deliver it or send it by registered or certified mail to the custodian.

(6) Upon payment of reasonable charges therefor, the antitrust investigator shall furnish a copy of the transcript to the witness only, except that the Assistant Attorney General in charge of the Antitrust Division may for good cause limit such witness to inspection of the official transcript of his testimony.

(7)(A) Any person compelled to appear under a demand for oral testimony pursuant to this section may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, either upon the request of such person or upon counsel's own initiative, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person shall not otherwise object to or refuse to answer any question, and shall not by himself or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, the antitrust investigator conducting the examination may petition the district court of the United States pursuant to section 1314 of this title for an order compelling such person to answer such question.

(B) If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of Part V of title 18.

(8) Any person appearing for oral examination pursuant to a demand served under this section shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(Pub. L. 87-664, § 3, Sept. 19, 1962, 76 Stat. 548; Pub. L. 94-435, title I, § 102, Sept. 30, 1976, 90 Stat. 1384.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-435 struck out "under investigation" preceding "may be in possession", inserted "or may have any information" following "any documentary material", and added provision requiring the production of documentary material for inspection or reproduction, answers in writing to written interrogatories, the giving of oral testimony concerning documentary material or information, and the furnishing of any combination of such material, answers, or testimony.

Subsec. (b). Pub. L. 94-435 restructured subsec. (b) and as so restructured, in par. (1) added the provisions of cl. (B), in par. (2), added cls. (B) and (C), in par. (3) substituted provisions relating to written interrogatories for provisions relating to prescription of a return date for demanded material, and in par. (4), substituted provisions relating to oral testimony for provisions requiring a demand to identify the custodian to whom demanded material shall be made available.

Subsec. (c). Pub. L. 94-435 added a provision relating to the submission of answers to written interrogatories and the giving of oral testimony, deleted provisions of former par. (1) relating to the reasonableness requirement for demands for documentary material, redesignated former par. (2) as (1), and as so redesignated, provided that the protected status of any information or material would be determined by standards applicable in the case of a subpena or subpena duces tecum issued by a court of the United States, and added par. (2).

Subsec. (d). Pub. L. 94-435 redesignated subsec. (d) as (d)(1) and added subsec. (d)(2).

Subsec. (e). Pub. L. 94-435 redesignated subsec. (e) as subsec. (e)(1), as so redesignated, inserted "return receipt requested" after "certified mail" in par. (C), and added subsec. (e)(2).

Subsecs. (g)-(i). Pub. L. 94-435 added subsecs. (g) to (i).

EFFECTIVE DATE OF 1976 AMENDMENT.

Amendment by Pub. L. 94-435 effective Sept. 30, 1976, except subsec. (i)(8) of this section, effective Oct. 1, 1976, see section 106 of Pub. L. 94-435, set out as a note under section 1311 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1313, 1314 of this title.

§ 1313. Custodian of documents, answers and transcripts

(a) Designation

The Assistant Attorney General in charge of the Antitrust Division of the Department of Justice shall designate an antitrust investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this chapter, and such additional antitrust investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(b) Production of materials

Any person, upon whom any demand under section 1312 of this title for the production of documentary material has been duly served, shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person (or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to section 1314(d) of this title) on the return date specified in such demand (or on such later date as such custodian may prescribe in writing). Such person may upon written agreement between such person and the custodian substitute copies for originals of all or any part of such material.

(c) Responsibility for materials; disclosure

(1) The custodian to whom any documentary material, answers to interrogatories, or transcripts of oral testimony are delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return of documentary material, pursuant to this chapter.

(2) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any duly authorized official or employee of the Department of Justice under regulations which shall be promulgated by the Attorney General. Notwithstanding paragraph (3) of this subsection, such material, answers, and transcripts may be used by any such official or employee in connection with the taking of oral testimony pursuant to this chapter.

(3) Except as otherwise provided in this section, while in the possession of the custodian, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, so produced shall be available for examination, without the consent of the person who produced such material, answers, or transcripts, by any individual other than a duly authorized official or employee of the Department of Justice. Nothing in this section is intended to prevent disclosure to either body of the Congress or to any authorized committee or subcommittee thereof.

(4) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe, (A) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by any duly authorized representative of such person, and (B) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or his counsel.

(d) Use of investigative files

(1) Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal administrative or regulatory agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case, grand jury, or proceeding as such attorney determines to be required. Upon the completion of any such case, grand jury, or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through the introduction thereof into the record of such case or proceeding.

(2) The custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony may deliver to the Federal Trade Commission, in response to a written request, copies of such material, answers, or transcripts for use in connection with an investigation or proceeding under the Commission's jurisdiction. Such material, answers, or transcripts may only be used by the Commission in such manner and subject to such conditions as apply to the Department of Justice under this chapter.

(e) Return of material to producer

If any documentary material has been produced in the course of any antitrust investigation by any person pursuant to a demand under this chapter and—

(1) any case or proceeding before any court or grand jury arising out of such investigation, or any proceeding before any Federal administrative or regulatory agency involving such material, has been completed, or

(2) no case or proceeding, in which such material may be used, has been commenced within a reasonable time after completion of

the examination and analysis of all documentary material and other information assembled in the course of such investigation,

the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies thereof furnished to the custodian pursuant to subsection (b) of this section or made by the Department of Justice pursuant to subsection (c) of this section) which has not passed into the control of any court, grand jury, or agency through the introduction thereof into the record of such case or proceeding.

(f) Appointment of successor custodians

In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced under any demand issued pursuant to this chapter, or the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Assistant Attorney General in charge of the Antitrust Division shall promptly (1) designate another antitrust investigator to serve as custodian of such material, answers, or transcripts, and (2) transmit in writing to the person who produced such material, answers, or testimony notice as to the identity and address of the successor so designated. Any successor designated under this subsection shall have with regard to such material, answers, or transcripts all duties and responsibilities imposed by this chapter upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred prior to his designation.

(Pub. L. 87-664, § 4, Sept. 19, 1962, 76 Stat. 549; Pub. L. 94-435, title I, § 103, Sept. 30, 1976, 90 Stat. 1387.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c), (e), (f), and (g), in the original read "this Act", meaning Pub. L. 87-664, which is classified generally to this chapter. For complete classification of this Act to the Code, see Tables volume.

AMENDMENTS

1976—Subsec. (a) Pub. L. 94-435 substituted "custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this chapter" for "antitrust documentary custodian".

Subsec. (b). Pub. L. 94-435 struck out "issued" following "any demand", inserted "for the production of documentary material" preceding "has been duly served", and substituted "copies for originals of all or any part of such material" for "for copies of all or any part of such material originals thereof".

Subsec. (c). Pub. L. 94-435, among other changes, added provisions relating to answers to interrogatories and transcripts of oral testimony and, in par. (1), substituted "of documentary material" for "thereof", in par. (2), inserted "by any duly authorized official or employee of the Department of Justice" following "for official use", and added a provision relating to the use of documentary material, answers to interrogatories, and transcripts in connection with the taking of oral testimony, in par. (3), inserted "Except as otherwise provided in this section" preceding "while in the possession", substituted "no documentary material" for "no material", "official" for "officer, member", and added a provision relating to disclosure of information to Congress or authorized committees or subcommittees thereof, in par. (4), added cl. (B).

Subsec. (d). Pub. L. 94-435, among other changes, in par. (1), added provisions relating to answers to interrogatories and transcripts of oral testimony, substituted a provision that an attorney designated under this section be from the Department of Justice for a provision that a designated attorney be appearing on behalf of the United States, provided that such an attorney can make an appearance under this section before a Federal administrative or regulatory agency in addition to a court or grand jury, and added par. (2).

Subsec. (e). Pub. L. 94-435, among other changes, added provisions of former subsec. (f) relating to the institution of a case or proceeding within a reasonable time after examination and analysis of any evidence assembled during the course of an investigation, and relating to written demand for the return of such material, and, in addition, provided that copies furnished the custodian pursuant to subsec. (b) of this section need not be returned by the custodian.

Subsec. (f). Pub. L. 94-435 redesignated former subsec. (g) as (f). Former subsec. (f) redesignated (e)(2).

Subsec. (g). Pub. L. 94-435 redesignated former subsec. (g) as (f).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-435 effective Sept. 30, 1976, see section 106 of Pub. L. 94-435, set out as a note under section 1311 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1311 of this title.

§ 1314. Judicial proceedings

(a) Petition for enforcement; venue

Whenever any person fails to comply with any civil investigative demand duly served upon him under section 1312 of this title or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General, through such officers or attorneys as he may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this chapter.

(b) Petition for order modifying or setting aside demand; time for petition; suspension of time allowed for compliance with demand during pendency of petition; grounds for relief

Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding twenty days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any antitrust investigator named in the demand, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such antitrust investigator a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court, except that such person shall comply with any portions of the demand not sought to be modified or set aside. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this chapter, or upon any constitutional or other legal right or privilege of such person.

(c) Petition for order requiring performance by custodian of duties; venue

At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories delivered, or transcripts of oral testimony given by any person in compliance D with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this chapter.

(d) Jurisdiction; appeal; contempts

Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this chapter. Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

(e) Applicability of Federal Rules of Civil Procedure

To the extent that such rules may have application and are not inconsistent with the provisions of this chapter, the Federal Rules of Civil Procedure shall apply to any petition under this chapter.

(f) Disclosure exemption

Any documentary material, answers to written interrogatories, or transcripts of oral testimony provided pursuant to any demand issued under this chapter shall be exempt from disclosure under section 552 of title 5.

(Pub. L. 87-664, § 5, Sept. 19, 1962, 76 Stat. 551; Pub. L. 94-435, title I, § 104, Sept. 30, 1976, 90 Stat. 1389.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 87-664, which is classified generally to this chapter. For complete classification of this Act to the Code, see Tables volume.

The Federal Rules of Civil Procedure, referred to in the subsec. catchline and text of subsec. (e), are classified to Title 28, Appendix, Judiciary and Judicial Procedure.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-435, § 104(a), struck out provision which permitted a petition for an enforcement order to be filed in the judicial district where a person who had failed to comply with a demand and who transacted business in one or more districts, maintained his principal place of business, or in such other district, in which such person transacted business, as was agreed upon by the parties to the petition.

Subsec. (b). Pub. L. 94-435, § 104(b), (c), inserted "or within such period exceeding twenty days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any antitrust investigator named in the demand," following "whichever period is shorter", substituted "antitrust investigator" for "custodian" preceding "a petition for an order", and added proviso that petitioner should comply with portions of a contested demand which are not being challenged.

Subsec. (c). Pub. L. 94-435, § 104(d), substituted "or answers to interrogatories delivered, or transcripts of oral testimony given" for "delivered".

Subsec. (f). Pub. L. 94-435, § 104(e), added subsec. (f).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-435 effective Sept. 30, 1976, see section 106 of Pub. L. 94-435, set out as a note under section 1311 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1312, 1313 of this title.

CHAPTER 35—SEAT BELT REGULATION

§§ 1321 to 1323. Repealed. Pub. L. 89-563, title I, § 117(a), Sept 9, 1966, 80 Stat. 727

Sections, Pub. L. 88-201, §§ 1 to 3, Dec. 13, 1963, 77 Stat. 361, provided for the promulgation of standards for seat belts in motor vehicles and set the penalty for the unlawful sale, importation, or introduction into commerce of seat belts not meeting the published standards.

SAVINGS PROVISIONS

Legal liabilities incurred under sections 1301 to 1303 and 1321 to 1323 of this title by virtue of violations occurring prior to repeal to be determined according to the law as in effect on the date of the violation, standards to remain in effect until amended or revoked, actions, suits, or proceedings commenced prior to repeal to be pursued as if repeal had not been accomplished, see section 117(b) to (e) of Pub. L. 89-563, set out as a note under section 1301 of this title.

CHAPTER 36—CIGARETTE LABELING AND ADVERTISING

Sec.
1331. Congressional declaration of policy and purpose.
1332. Definitions.
1333. Labeling; requirement; conspicuous statement.
1334. Preemption.
1335. Unlawful advertisements on medium of electronic communication.
1336. Authority of Federal Trade Commission.
    (a) Action prior to and after July 1, 1971.
    (b) Unfair or deceptive acts or practices.
    (c) Issuance of trade regulation rules or requirements for affirmative statements in advertising.
1337. Reports to Congress.
1338. Criminal penalty.
1339. Injunction proceedings.
1340. Cigarettes for export.

§ 1331. Congressional declaration of policy and purpose

It is the policy of the Congress, and the purpose of this chapter, to establish a comprehensive Federal Program to deal with cigarette labeling and advertising with respect to any relationship between smoking and health, whereby—

(1) the public may be adequately informed that cigarette smoking may be hazardous to health by inclusion of a warning to that effect on each package of cigarettes; and

(2) commerce and the national economy may be (A) protected to the maximum extent

consistent with this declared policy and (B) not impeded by diverse, nonuniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health.

(Pub. L. 89-92, § 2, July 27, 1965, 79 Stat. 282; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 87.)

AMENDMENTS

1970—Pub. L. 91-222 re-enacted section without change.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 3 of Pub. L. 91-222 provided in part that: "All other provisions of the amendment made by this Act [enacting section 1340 of this title, amending this section and sections 1332 and 1335 to 1339 of this title, and enacting provisions set out as notes under this section] except where otherwise specified shall take effect on January 1, 1970."

EFFECTIVE DATE

Section 11 of Pub. L. 89-92 provided that: "This Act [this chapter] shall take effect on January 1, 1966."

SHORT TITLE OF 1973 AMENDMENT

Section 1 of Pub. L. 93-109 provided: "That this Act [which enacted subsec. (7) of section 1332 of this title and amended section 1335 of this title] may be cited as the 'Little Cigar Act of 1973'."

SHORT TITLE OF 1970 AMENDMENT

Section 1 of Pub. L. 91-222 provides: "That this Act [enacting section 1340 of this title, amending this section, and sections 1332 to 1339 of this title, and enacting provisions set out as notes under this section and sections 1333 and 1334 of the title] may be cited as the 'Public Health Cigarette Smoking Act of 1969'."

SHORT TITLE

Section 1 of Pub. L. 89-92 provided that Pub. L. 89-92, which enacted this chapter, may be cited as the "Federal Cigarette Labeling and Advertising Act".

SEPARABILITY OF PROVISIONS

Section 12 of Pub. L. 89-92 as added by section 2 of Pub. L. 91-222 provided that: "If any provision of this Act [this chapter] or the application thereof to any person or circumstances is held invalid, the other provisions of this Act [this chapter] and the application of such provisions to other persons or circumstances shall not be affected thereby."

§ 1332. Definitions

As used in this chapter—

(1) The term "cigarette" means—

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A).

(2) The term "commerce" means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof; (B) commerce between points in any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or (C) commerce wholly within the District of Columbia, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island.

(3) The term "United States", when used in a geographical sense, includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, and Johnston Island. The term "State" includes any political division of any State.

(4) The term "package" means a pack, box, carton, or container of any kind in which cigarettes are offered for sale, sold, or otherwise distributed to consumers.

(5) The term "person" means an individual, partnership, corporation, or any other business or legal entity.

(6) The term "sale or distribution" includes sampling or any other distribution not for sale.

(7) The term "little cigar" means any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsection (1)) and as to which one thousand units weigh not more than three pounds.

(Pub. L. 89-92, § 3, July 27, 1965, 79 Stat. 282; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 88; Pub. L. 93-109, § 2, Sept. 21, 1973, 87 Stat. 352.)

AMENDMENTS

1973—Subsec. (7). Pub. L. 93-109 added subsec. (7).

1970—Par. (3). Pub. L. 91-222 added provisions defining "State".

EFFECTIVE DATE OF 1973 AMENDMENT

Section 4 of Pub. L. 93-109 provided that: "The amendment made by this Act [enacting subsec. (7) of this section and amending section 1335 of this title] shall become effective thirty days after the date of enactment [Sept. 21, 1973]."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-222 to take effect as of Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91-222, set out in part as a note under section 1331 of this title.

§ 1333. Labeling; requirement; conspicuous statement

It shall be unlawful for any person to manufacture, import, or package for sale or distribution within the United States any cigarettes the package of which fails to bear the following statement: "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health". Such statement shall be located in a conspicuous place on every cigarette package and shall appear in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the package.

(Pub. L. 89-92, § 4, July 27, 1965, 79 Stat. 283; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 88.)

Amendments

1970—Pub. L. 91-222 substituted "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health" for "Caution: Cigarette Smoking May Be Hazardous to Your Health."

Effective Date of 1970 Amendment

Section 3 of Pub. L. 91-222 provided in part that: "Section 4 of the amendment made by this Act [amending this section] shall take effect on the first day of the seventh calendar month which begins after the date of the enactment of this Act [Apr. 1, 1970]."

Section Referred to in Other Sections

This section is referred to in section 1334 of this title.

§ 1334. Preemption

(a) No statement relating to smoking and health, other than the statement required by section 1333 of this title, shall be required on any cigarette package.

(b) No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this chapter.

(Pub. L. 89-92, § 5, July 27, 1965, 79 Stat. 283; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 88.)

Amendments

1970—Subsec. (b). Pub. L. 91-222 substituted provision that no requirement or prohibition based on smoking and health should be imposed under State law with respect to the advertising or promotion of any cigarettes which packages are labeled in conformity with the provisions of this chapter for provision that no statement relating to smoking and health should be required in the advertising of any cigarettes which packages are labeled in conformity with the provisions of this chapter.

Subsecs. (c), (d). Pub. L. 91-222 struck out subsecs. (c) and (d), relating to the authority of the Federal Trade Commission with respect to unfair or deceptive advertising acts or practices, and reports to Congress by the Secretary of Health, Education, and Welfare and the Federal Trade Commission. See, now, sections 1336 and 1337 of this title.

Effective Date of 1970 Amendment

Section 3 of Pub. L. 91-222 provided in part that: "Section 5 of the amendment made by this Act [amending this section] shall take effect as of July 1, 1969."

§ 1335. Unlawful advertisements on medium of electronic communication

After January 1, 1971, it shall be unlawful to advertise cigarettes and little cigars on any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission.

(Pub. L. 89-92, § 6, July 27, 1965, 79 Stat. 283; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 89; Pub. L. 93-109, § 3, Sept. 21, 1973, 87 Stat. 352.)

Amendments

1973—Pub. L. 93-109 extended the prohibition against advertisements to little cigars.

1970—Pub. L. 91-222 substituted provision that after January 1, 1971, it shall be unlawful to advertise cigarettes on any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission, for provision that a violation of this chapter should constitute misdemeanor and be punishable by fine. See, now, section 1338 of this title.

Effective Date of 1973 Amendment

Amendment by Pub. L. 93-109 effective thirty days after Sept. 21, 1973, see section 4 of Pub. L. 93-109, set out as a note under section 1332 of this title.

Effective Date of 1970 Amendment

Amendment by Pub. L. 91-222 to take effect as of Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91-222, set out in part as a note under section 1331 of this title.

§ 1336. Authority of Federal Trade Commission

(a) Action prior to and after July 1, 1971

The Federal Trade Commission shall not take any action before July 1, 1971, with respect to its pending trade regulation rule proceeding relating to cigarette advertising. If at any time on or after July 1, 1971, the Federal Trade Commission determines it is necessary to take action with respect to such pending trade regulation rule proceeding, it shall notify the Congress of the determination. Such notification shall include the text of the trade regulation rule and a full statement of the basis for such determination. No trade regulation rule adopted in such proceeding may take effect until six months after the Commission has notified the Congress of the text of such rule, in order that the Congress may act if it so desires.

(b) Unfair or deceptive acts or practices

Except as provided in subsection (a) of this section, nothing in this chapter shall be construed to limit, restrict, expand, or otherwise affect the authority of the Federal Trade Commission with respect to unfair or deceptive acts or practices in the advertising of cigarettes.

(c) Issuance of trade regulation rules or requirements for affirmative statements in advertising

Nothing in this chapter shall be construed to affirm or deny the Federal Trade Commission's holding that it has the authority to issue trade regulation rules or to require an affirmative statement in any cigarette advertisement.

(Pub. L. 89-92, § 7, July 27, 1965, 79 Stat. 283; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 89.)

Amendments

1970—Pub. L. 91-222 substituted provisions concerning the action of the Federal Trade Commission with respect to its pending trade regulation rule proceeding relating to cigarette advertising, the Commission's authority with respect to unfair or deceptive cigarette advertising acts or practices, and its authority to issue trade regulation rules or to require an affirmative statement in any cigarette advertisement, for provisions investing the several district courts with jurisdiction, for cause shown, to prevent and restrain violations of this chapter upon proper application. See, now, section 1339 of this title.

Effective Date of 1970 Amendment

Amendment by Pub. L. 91-222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91-222, set out in part as a note under section 1331 of this title.

§ 1337. Reports to Congress

(a) The Secretary of Health, Education, and Welfare shall transmit a report to the Congress not later than January 1, 1971, and annually thereafter, concerning (A) current information in the health consequences of smoking, and (B) such recommendations for legislation as he may deem appropriate.

(b) The Federal Trade Commission shall transmit a report to the Congress not later than January 1, 1971, and annually thereafter, concerning (A) the effectiveness of cigarette labeling, (B) current practices and methods of cigarette advertising and promotion, and (C) such recommendations for legislation as it may deem appropriate.

(Pub. L. 89-92, § 8, July 27, 1965, 79 Stat. 284; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 89.)

AMENDMENTS

1970—Pub. L. 91-222 substituted provisions requiring the Secretary of Health, Education, and Welfare, and the Federal Trade Commission, respectively, to transmit a report to Congress, at the prescribed time, concerning current information in the health consequences of smoking, and such recommendations for legislation as he may deem appropriate, and the effectiveness of cigarette labeling, current practices and methods of cigarette advertising and promotion, and such recommendations as it may deem appropriate, for a provision exempting cigarettes for export from the requirements of this chapter. See, now, section 1340 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91-222, set out in part as a note under section 1331 of this title.

§ 1338. Criminal penalty

Any person who violates the provisions of this chapter shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than $10,000.

(Pub. L. 89-92, § 9, July 27, 1965, 79 Stat. 284; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 89.)

AMENDMENTS

1970—Pub. L. 91-222 substituted provisions that violators shall be guilty of misdemeanor and subject to fine, for provision that if any part of this chapter be held invalid, other provisions thereof shall not be affected. See, now, Separability of Provisions note under section 1331 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91-222, set out in part as a note under section 1331 of this title.

§ 1339. Injunction proceedings

The several district courts of the United States are invested with jurisdiction, for cause shown, to prevent and restrain violations of this chapter upon the application of the Attorney General of the United States acting through the several United States attorneys in their several districts.

(Pub. L. 89-92, § 10, July 27, 1965, 79 Stat. 284; Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 89.)

AMENDMENTS

1970—Pub. L. 91-222 substituted provision that the several district courts are invested with jurisdiction in injunction proceedings, for provisions that regulation of advertising terminate on July 1, 1969, but that such termination shall not be construed as limiting, expanding or otherwise affecting such jurisdiction which Federal Trade Commission or other federal agencies had prior to July 27, 1965.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91-222, set out in part as a note under section 1331 of this title.

§ 1340. Cigarettes for export

Packages of cigarettes manufactured, imported, or packaged (1) for export from the United States or (2) for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States shall be exempt from the requirements of this chapter, but such exemptions shall not apply to cigarettes manufactured, imported, or packaged for sale or distribution to members or units of the Armed Forces of the United States located outside of the United States.

(Pub. L. 89-92, § 11, as added Pub. L. 91-222, § 2, Apr. 1, 1970, 84 Stat. 89.)

CODIFICATION

Another section 11 of Pub. L. 89-92, July 27, 1965, 79 Stat. 284, is set out as an Effective Date note under section 1331 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1970, see section 3 of Pub. L. 91-222, set out in part as a note under section 1331 of this title.

CHAPTER 37—STATE TECHNICAL SERVICES

Sec.
1351. Declaration of purpose.
1352. Definitions.
1353. Selection of designated agency.
1354. Five-year plan; annual technical services program.
1355. Conditions precedent to acceptance of plans and programs for review and approval by Secretary.
1356. Review and approval of plans and programs by Secretary.
1357. Interstate cooperation in administration and coordination of plans and programs.
1358. Consent of Congress for interstate compacts; reservation of right to alter, amend, or repeal.
1359. Advisory councils for technical services; appointment; functions; compensation and expenses.
1360. Appropriations and payments.
    (a) Authorization of appropriations.
    (b) Authorization of annual payments; maximum amounts.
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    (d) Expenses of administration.
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1361. Reference services to assist designated agencies to obtain information outside State.
1362. Rules and regulations.
1363. Prohibition against control over educational institutions; functions or responsibilities of other departments not affected.
1364. Annual report by designated agencies to Secretary; report by Secretary to President and Congress.
1365. Public committee; appointment; functions; report.
1366. Termination of payments for noncompliance with law or diversion of funds.

Sec.
1367. Repayments.
1368. Records.

§ 1351. Declaration of purpose

Congress finds that wider diffusion and more effective application of science and technology in business, commerce, and industry are essential to the growth of the economy, to higher levels of employment, and to the competitive position of United States products in world markets. The Congress also finds that the benefits of federally financed research, as well as other research, must be placed more effectively in the hands of American Business, commerce, and industrial establishments. The Congress further finds that the several States through cooperation with universities, communities, and industries can contribute significantly to these purposes by providing technical services designed to encourage a more effective application of science and technology to both new and established business, commerce, and industrial establishments. The Congress, therefore, declares that the purpose of this chapter is to provide a national program of incentives and support for the several States individually and in cooperation with each other in their establishing and maintaining State and interstate technical service programs designed to achieve these ends.

(Pub. L. 89-182, § 1, Sept. 14, 1965, 79 Stat. 679.)

SHORT TITLE

Section 19 of Pub. L. 89-182 provided that: "This Act [this chapter] may be cited as the 'State Technical Services Act of 1965'."

§ 1352. Definitions

For the purposes of this chapter—

(a) "Technical services" means activities or programs designed to enable businesses, commerce, and industrial establishments to acquire and use scientific and engineering information more effectively through such means as—

(1) preparing and disseminating technical reports, abstracts, computer tapes, microfilm, reviews, and similar scientific or engineering information, including the establishment of State or interstate technical information centers for this purpose;

(2) providing a reference service to identify sources of engineering and other scientific expertise; and

(3) sponsoring industrial workshops, seminars, training programs, extension courses, demonstrations, and field visits designed to encourage the more effective application of scientific and engineering information.

(b) "Designated agency" means the institution or agency which has been designated as administrator of the program for any State or States under section 1353 or 1357 of this title.

(c) "Qualified institution" means (1) an institution of higher learning with a program leading to a degree in science, engineering, or business administration which is accredited by a nationally recognized accrediting agency or association to be listed by the United States Commissioner of Education, or such an institution which is listed separately after evaluation by the United States Commissioner of Education pursuant to this subsection; or (2) a State agency or a private, nonprofit institution which meets criteria of competence established by the Secretary of Commerce and published in the Federal Register. For the purpose of this subsection the United States Commissioner of Education shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of science, engineering, or business education or training offered. When the Commissioner determines that there is no nationally recognized accrediting agency or association qualified to accredit such programs he shall publish a list of institutions he finds qualified after prior evaluation by an advisory committee, composed of persons he determines to be specially qualified to evaluate the training provided under such programs.

(d) "Participating institution" means each qualified institution in a State, which participates in the administration or execution of the State technical services program as provided by this chapter.

(e) "Secretary" means the Secretary of Commerce.

(f) "State" means one of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam or the Virgin Islands.

(g) "Governor", in the case of the District of Columbia, means the Board of Commissioners of the District of Columbia.

(Pub. L. 89-182, § 2, Sept. 14, 1965, 79 Stat. 679; Pub. L. 89-771, Nov. 6, 1966, 80 Stat. 1322.)

AMENDMENTS

1966—Subsec. (f). Pub. L. 89-771 included Guam within the definition of State.

TRANSFER OF FUNCTIONS

Except as otherwise provided in Reorg. Plan No. 3 of 1967, eff. Aug. 11, 1967 (in part), 32 F.R. 11669, 81 Stat. 948, all functions of the Board of Commissioners of the District of Columbia were transferred to the Commissioner of the District of Columbia by section 401 of Reorg. Plan No. 3 of 1967. The office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, was abolished as of noon Jan. 2, 1975, by Pub. L. 93-198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, and replaced by the office of Mayor of the District of Columbia by section 421 of Pub. L. 93-198, classified to section 1-161 of the District of Columbia Code.

§ 1353. Selection of designated agency

The Governor of any State which wishes to receive Federal payments under this chapter in support of its existing or planned technical services program shall designate, under appropriate State laws and regulations, an institution or agency to administer and coordinate that program and to prepare and submit a plan and programs to the Secretary of Commerce for approval under this chapter.

(Pub. L. 89-182, § 3, Sept. 14, 1965, 79 Stat. 680.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1352 of this title.

§ 1354. Five-year plan; annual technical services program

The designated agency shall prepare and submit to the Secretary in accordance with such regulations as he may publish—

(a) A five-year plan which may be revised annually and which shall: (1) outline the technological and economic conditions of the State, taking into account its region, business, commerce, and its industrial potential and identify the major regional and industrial problems; (2) identify the general approaches and methods to be used in the solution of these problems and outline the means for measuring the impact of such assistance on the State or regional economy; and (3) explain the methods to be used in administering and coordinating the technical services program.

(b) An annual technical services program which shall (1) identify specific methods, which may include contracts, for accomplishing particular goals and outline the likely impact of these methods in terms of the five-year plan; (2) contain a detailed budget, together with procedures for adequate fiscal control, fund accounting, and auditing, to assure proper disbursement for funds paid to the State under this chapter; and (3) indicate the specific responsibilities assigned to each participating institution in the State.

(Pub. L. 89-182, § 4, Sept. 14, 1965, 79 Stat. 680.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1356, 1357, 1359 of this title.

§ 1355. Conditions precedent to acceptance of plans and programs for review and approval by Secretary

The Secretary shall not accept the five-year plan of a State for review and approval under this chapter unless the Governor of the State or his designee determines and certifies that the plan is consistent with State policies and objectives; and the Secretary shall not accept an annual technical services program for review and approval under this chapter unless the designated agency has, as certified thereto by the Governor or his designee—

(a) invited all qualified institutions in the State to submit proposals for providing technical services under the chapter;

(b) coordinated its programs with other States and with other publicly supported activities within the State, as appropriate;

(c) established adequate rules to insure that no officer or employee of the State, the designated agency, or any participating institution, shall receive compensation for technical services he performs, for which funds are provided under this chapter, from sources other than his employer, and shall not otherwise maintain any private interest in conflict with his public responsibility;

(d) determined that matching funds will be available from State or other non-Federal sources;

(e) determined that such technical services program does not provide a service which on the date of such certification is economically and readily available in such State from private technical services, professional consultants, or private institutions;

(f) planned no services specially related to a particular firm or company, public work, or other capital project except insofar as the services are of general concern to the industry and commerce of the community, State, or region;

(g) provided for making public all reports prepared in the course of furnishing technical services supported under this chapter or for making them available at cost to any person on request.

(Pub. L. 89-182, § 5, Sept. 14, 1965, 79 Stat. 681.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1356, 1357 of this title.

§ 1356. Review and approval of plans and programs by Secretary

The Secretary shall review the five-year plan and each annual program submitted by a designated agency under section 1354 or 1357 of this title, and shall approve only those which (1) bear the certification required by the Governor or his designee under section 1355 of this title; (2) comply with regulations and meet criteria that the Secretary shall promulgate and publish in the Federal Register; and (3) otherwise accomplish the purpose of this chapter.

(Pub. L. 89-182, § 6, Sept. 14, 1965, 79 Stat. 681.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1357 of this title.

§ 1357. Interstate cooperation in administration and coordination of plans and programs

Two or more States may cooperate in administering and coordinating their plans and programs supported under this chapter, in which event all or part of the sums authorized and payable under section 1360 of this title to all of the cooperating States may be paid to the designated agency, participating institutions, or persons authorized to receive them under the terms of the agreement between the cooperating States. When the cooperative agreement designates an interstate agency to act on behalf of all of the cooperating States, it shall submit to the Secretary for review and approval under section 1356 of this title an interstate five-year plan and an annual interstate technical services program which, as nearly as practicable, shall meet the requirements of sections 1354 and 1355 of this title.

(Pub. L. 89-182, § 7, Sept. 14, 1965, 79 Stat. 681.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1352, 1356, 1358, 1360 of this title.

§ 1358. Consent of Congress for interstate compacts; reservation of right to alter, amend, or repeal

(a) The consent of the Congress is given to any two or more States to enter into agreement or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance and in designating agencies, under section 1357 of this title, for accomplishing the purposes of this chapter.

(b) The right to alter, amend, or repeal this section, or consent granted by this section, is expressly reserved.

(Pub. L. 89-182, § 8, Sept. 14, 1965, 79 Stat. 682.)

§ 1359. Advisory councils for technical services; appointment; functions; compensation and expenses

Each designated agency shall appoint an advisory council for technical services, the members of which shall represent broad community interests and shall be qualified to evaluate programs submitted under section 1354 of this title. The advisory council shall review each annual program, evaluate its relation to the purposes of this chapter, and report its findings to the designated agency and the Governor or his designee. Each report of each advisory council shall be available to the Secretary on request. Members of any such advisory council shall not be compensated for serving as such, but may be reimbursed for necessary expenses incurred by them in connection with attending meetings of any advisory council of which they are members.

(Pub. L. 89-182, § 9, Sept. 14, 1965, 79 Stat. 682.)

TERMINATION OF ADVISORY COUNCILS

Advisory Councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1360. Appropriations and payments

(a) Authorization of appropriations

There are authorized to be appropriated for the purposes of this chapter, $10,000,000 for the fiscal year ending June 30, 1966; $20,000,000 for the fiscal year ending June 30, 1967; $30,000,000 for the fiscal year ending June 30, 1968; $6,600,000 for the fiscal year ending June 30, 1969; $10,000,000 for the fiscal year ending June 30, 1970; $10,000,000 for the fiscal year ending June 30, 1971.

(b) Authorization of annual payments; maximum amounts

From these amounts, the Secretary is authorized to make an annual payment to each designated agency, participating institution, or person authorized to receive payments in support of each approved technical services program. Maximum amounts which may be paid to the States under this subsection shall be fixed in accordance with regulations which the Secretary shall promulgate and publish in the Federal Register from time to time, considering (1) population according to the last decennial census; (2) business, commercial, industrial and economic development and productive efficiency; and (3) technical resources.

(c) Payments for programs of special merit or additional programs

The Secretary may reserve an amount equal to not more than 20 per centum of the total amount appropriated for each year under this section and is authorized to make payments from such amount to any designated agency or participating institution for technical services programs which he determines have special merit or to any qualified institution for additional programs which he determines are necessary to accomplish the purposes of this chapter, under criteria and regulations that he shall promulgate and publish in the Federal Register.

(d) Expenses of administration

An amount equal to not more than 5 per centum of the total amount appropriated each year under this section shall be available to the Secretary for the direct expenses of administering this chapter.

(e) Limitations on payments

(1) No amount paid for any technical services program under subsection (b) or (c) of this section shall exceed the amount of non-Federal funds expended to carry out such program: *Provided*, That the Secretary may pay an amount not to exceed $25,000 a year for each of the first three fiscal years to each designated agency, other than a designated agency under section 1357 of this title, to assist in the preparation of the five-year plan and the initial annual technical services programs, without regard to any of the preceding requirements of this section.

(2) No funds appropriated pursuant to the provisions of this section shall be paid to any designated agency, participating institution, or person on account of any such agency or institution, to carry out any technical services activity or program in any State if such activity or program duplicates any activity or program readily available in such State from Federal or State agencies, including publicly supported institutions of higher learning in such State.

(Pub. L. 89-182, § 10, Sept. 14, 1965, 79 Stat. 682; Pub. L. 90-422, July 24, 1968, 82 Stat. 423.)

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-422 authorized appropriation of $6,600,000 for the fiscal year ending June 30, 1969, $10,000,000 for the fiscal year ending June 30, 1970, and $10,000,000 for the fiscal year ending June 30, 1971.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1357 of this title.

§ 1361. Reference services to assist designated agencies to obtain information outside State

The Secretary is authorized and directed to aid designated agencies in carrying out their technical services programs by providing reference services which a designated agency may use to obtain scientific, technical, and engineering information from sources outside the State or States which it serves, for the purposes of this chapter.

(Pub. L. 89-182, § 11, Sept. 14, 1965, 79 Stat. 683.)

§ 1362. Rules and regulations

The Secretary is authorized to establish such policies, standards, criteria, and procedures and to prescribe such rules and regulations as he may deem necessary or appropriate for the administration of this chapter.

(Pub. L. 89-182, § 12, Sept. 14, 1965, 79 Stat. 683.)

§ 1363. Prohibition against control over educational institutions; functions or responsibilities of other departments not affected

(a) Nothing contained in this chapter shall be construed as authorizing a department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over, or impose any requirements or conditions with respect to the personnel, curriculum, methods of instruction, or administration of any educational institution.

(b) Nothing contained in this chapter shall be deemed to affect the functions or responsibilities under law of any other department or agency of the United States.

(Pub. L. 89-182, § 13, Sept. 14, 1965, 79 Stat. 683.)

§ 1364. Annual report by designated agencies to Secretary; report by Secretary to President and Congress

(a) Each designated agency shall make an annual report to the Secretary on or before the first day of September of each year on the work accomplished under the technical services program and the status of current services, together with a detailed statement of the amounts received under any of the provisions of this chapter during the preceding fiscal year, and of their disbursement.

(b) The Secretary shall make a complete report with respect to the administration of this chapter to the President and the Congress not later than January 31 following the end of each fiscal year for which amounts are appropriated pursuant to this chapter.

(Pub. L. 89-182, § 14, Sept. 14, 1965, 79 Stat. 683.)

§ 1365. Public committee; appointment; functions; report

Within three years from September 14, 1965, the Secretary shall appoint a public committee, none of the members of which shall have been directly concerned with the preparation of plans, administration of programs or participation in programs under this chapter. The Committee shall evaluate the significance and impact of the program under this chapter and make recommendations concerning the program. A report shall be transmitted to the Secretary within sixty days after the end of such three-year period.

(Pub. L. 89-182, § 15, Sept. 14, 1965, 79 Stat. 684.)

§ 1366. Termination of payments for noncompliance with law or diversion of funds

Whenever the Secretary, after reasonable notice and opportunity for hearing to any designated agency or participating institution receiving funds under this chapter finds that—

(a) the agency or institution is not complying substantially with provisions of this chapter, with the regulations promulgated by the Secretary, or with the approved annual technical services program; or

(b) any funds paid to the agency or institution under the provisions of this chapter have been lost, misapplied, or otherwise diverted from the purposes for which they were paid or furnished—

the Secretary shall notify such agency or institution that no further payments will be made under the provisions of this chapter until he is satisfied that there is substantial compliance or the diversion has been corrected or, if compliance or correction is impossible, until such agency or institution repays or arranges for the repayment of Federal funds which have been diverted or improperly expended.

(Pub. L. 89-182, § 16, Sept. 14, 1965, 79 Stat. 684.)

Section Referred to in Other Sections

This section is referred to in section 1367 of this title.

§ 1367. Repayments

Upon notice by the Secretary to any designated agency or participating institution that no further payments will be made pending substantial compliance, correction, or repayment under section 1366 of this title, any funds which may have been paid to such agency or institution under this chapter and which are not expended by the agency or institution on the date of such notice, shall be repaid to the Secretary and be deposited to the account of the appropriations from which they originally were paid.

(Pub. L. 89-182, § 17, Sept. 14, 1965, 79 Stat. 684.)

§ 1368. Records

(a) Each recipient of a grant under this chapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and the disposition of such grant, the total cost of the related approved program, the amount and nature of the cost of the program supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the recipient that are pertinent to amounts received under this chapter.

(Pub. L. 89-182, § 18, Sept. 14, 1965, 79 Stat. 684.)

CHAPTER 38—TRAFFIC AND MOTOR VEHICLE SAFETY

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SUBCHAPTER III—RESEARCH AND TEST FACILITIES

1431. Facilities for research and testing in traffic safety.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1920, 2002 of this title; title 42 section 4905; title 49 section 1655.

§ 1381. Congressional declaration of purpose

Congress hereby declares that the purpose of this chapter is to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents. Therefore, Congress determines that it is necessary to establish motor vehicle safety standards for motor vehicles and equipment in interstate commerce; to undertake and support necessary safety research and development; and to expand the national driver register.

(Pub. L. 89-563, § 1, Sept. 9, 1966, 80 Stat. 718.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 89-563, which is generally classified to this chapter. For complete classification of this Act to the Code, see Short Title note under this section and Tables volume.

SHORT TITLE OF 1974 AMENDMENT

Section 1 of Pub. L. 93-492 provided: "That this Act [which enacted sections 1391(14), (15), 1392(i), 1402, 1410a, 1410b, 1411 to 1420, and 1963a, amended sections 1391(10), 1393(a), 1397(a)(1), (2), (b)(1) to (3), (5), 1398(a), 1399(a), (c), 1401(a), (c), (e), 1408(a), 1409, 1424(a), 1961(b), (c), 1962(a), and 1963, and repealed sections 1393 and 1402 of this title, and enacted provisions set out as notes under sections 1392, 1393, 1409, and 1411 of this title] may be cited as the 'Motor Vehicle and Schoolbus Safety Amendments of 1974'."

SHORT TITLE OF 1972 AMENDMENT

Section 1 of Pub. L. 92-548 provided: "That this Act [which amended sections 1409 and 1410 of this title] may be cited as the 'National Traffic and Motor Vehicle Safety Act Amendments of 1972.'"

SHORT TITLE

Section 101 of Pub. L. 89-563 provided that "This Act [section 1 of which Act enacted section 1381 of this title; title I of which Act enacted subchapter I of this chapter and notes set out under sections 1301, 1381, and 1403 of this title and repealed sections 1301 to 1303 and 1321 to 1325 of this title; title II of which Act enacted subchapter II of this chapter; title III of which Act enacted subchapter III of this chapter; and title IV of which Act amended note set out under section 313 of Title 23, Highways] may be cited as the 'National Traffic and Motor Vehicle Safety Act of 1966'."

REPORT BY JAN. 1, 1971, ON EXTENT, CAUSES AND MEANS OF PREVENTION OF AGRICULTURAL TRACTOR ACCIDENTS ON BOTH ROADS AND FARMS

Pub. L. 91-265, § 8, May 22, 1970, 84 Stat. 264, authorized the Secretary of Transportation to prepare and submit to the Congress no later than January 1, 1971, a report on the extent, causes and means of prevention of agricultural tractor accidents on both public roads and farms.

STUDY FOR SCHOOLBUS SAFETY; REPORT TO CONGRESS; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 90-247, title VI, §§ 601, 602, Jan. 2, 1968, 81 Stat. 815, 816, authorized a joint study by the Secretary of Health, Education, and Welfare and the Secretary of Transportation to recommend action to promote schoolbus safety, required the Secretary of Health, Education, and Welfare to report the results of this study, together with his recommendations, to Congress not later than Jan. 31, 1969, and authorized to be appropriated $150,000 to carry out this study.

INVESTIGATION OF NEED FOR ACCIDENT AND INJURY RESEARCH TEST FACILITY AND REPORT TO CONGRESS BY DECEMBER 31, 1967; AUTHORIZATION OF APPROPRIATION

Pub. L. 89-563, title III, §§ 301-303, Sept. 9, 1966, 80 Stat. 729, authorized the Secretary of Commerce to study the need for a facility to conduct research, development, and testing in traffic safety and the safety of machinery used on highways or in connection with the maintenance of highways, required the Secretary to report the results of his study to Congress not later than Dec. 31, 1967, and authorized to be appropriated not to exceed $3,000,000 for the study and report.

AUTOMOBILE INSURANCE INVESTIGATION

Authorization of Secretary of Transportation to conduct comprehensive study and investigation of compensation system for motor vehicle accident losses, and for other purposes, see Pub. L. 90-313, May 22, 1968, 82 Stat. 126, set out as a note under section 1653 of Title 49, Transportation.

SUBCHAPTER I—MOTOR VEHICLE SAFETY STANDARDS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1421, 1422, 1423, 1425, 1426, 1912, 1920 of this title.

PART A—GENERAL PROVISIONS

AMENDMENTS

1974—Pub. L. 93-492, title I, § 102(b)(1), Oct. 27, 1974, 88 Stat. 1477, added heading "Part A—General Provisions".

§ 1391. Definitions

As used in this subchapter—

(1) "Motor vehicle safety" means the performance of motor vehicles or motor vehicle equipment in such a manner that the public is protected against unreasonable risk of accidents occurring as a result of the design, construction or performance of motor vehicles and is also protected against unreasonable risk of death or injury to persons in the event accidents do occur, and includes nonoperational safety of such vehicles.

(2) "Motor vehicle safety standards" means a minimum standard for motor vehicle performance, or motor vehicle equipment performance, which is practicable, which meets the need for motor vehicle safety and which provides objective criteria.

(3) "Motor vehicle" means any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails.

(4) "Motor vehicle equipment" means any system, part, or component of a motor vehicle as originally manufactured or any similar part or component manufactured or sold for replacement or improvement of such system, part, or component or as any accessory, or addition to the motor vehicle, and any device, article, or apparel not a system, part, or component of a motor vehicle (other than medicines, or eyeglasses prescribed by a physician or other duly licensed practitioner), which is manufactured, sold, delivered, offered, or intended for use exclusively to safeguard motor vehicles, drivers, passengers, and other highway users from risk of accident, injury, or death.

(5) "Manufacturer" means any person engaged in the manufacturing or assembling of motor vehicles or motor vehicle equipment, including any person importing motor vehicles or motor vehicle equipment for resale.

(6) "Distributor" means any person primarily engaged in the sale and distribution of motor vehicles or motor vehicle equipment for resale.

(7) "Dealer" means any person who is engaged in the sale and distribution of new motor vehicles or motor vehicle equipment primarily to purchasers who in good faith purchase any such vehicle or equipment for purposes other than resale.

(8) "State" includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

(9) "Interstate commerce" means commerce between any place in a State and any place in another State, or between places in the same State through another State.

(10) "Secretary" means the Secretary of Transportation.

(11) "Defect" includes any defect in performance, construction, components, or materials in motor vehicles or motor vehicle equipment.

(12) "United States district courts" means the Federal district courts of the United States and the United States courts of the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

(13) "Vehicle Equipment Safety Commission" means the Commission established pursuant to the joint resolution of the Congress relating to highway traffic safety, approved August 20, 1958 (72 Stat. 635), or as it may be hereafter reconstituted by law.

(14) "schoolbus" means a passenger motor vehicle which is designed to carry more than 10 passengers in addition to the driver, and which

the Secretary determines is likely to be significantly used for the purpose of transporting primary, preprimary, or secondary school students to or from such schools or events related to such schools; and

(15) "schoolbus equipment" means equipment designed primarily as a system, part, or component of a schoolbus, or any similar part of component manufactured or sold for replacement or improvement of such system, part, or component or as an accessory or addition to a schoolbus.

(Pub. L. 89-563, title I, § 102, Sept. 9, 1966, 80 Stat. 718; Pub. L. 91-265, § 2, May 22, 1970, 84 Stat. 262; Pub. L. 93-492, title I, § 110(a), title II, § 201, Oct. 27, 1974, 88 Stat. 1484.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this title", meaning title I of Pub. L. 89-563, which is generally classified to this subchapter. For complete classification of this title to the Code, see Short Title note set out under section 1381 of this title and Tables volume.

The joint resolution of the Congress relating to highway traffic safety, approved August 20, 1958 (72 Stat. 635), referred to in par. (13), is Pub. L. 85-684, set out as a note under former 313 of Title 23, Highways.

AMENDMENTS

1974—Par. (10). Pub. L. 93-492, § 110(a), substituted "the Secretary of Transportation" for "Secretary of Commerce".

Pars. (14), (15). Pub. L. 93-492, § 201, added pars. (14) and (15).

1970—Par. (4). Pub. L. 91-265 extended definition of motor vehicle equipment to include any device, article, or apparel not a system, part, or component of a motor vehicle designed exclusively to safeguard vehicles, occupants and other highway users from risk of accident, injury, or death.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment of par. (10) by Pub. L. 93-492 effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

TRANSFER OF FUNCTIONS

Section 201(c) of Pub. L. 89-564, as amended, which is set out as a note under section 401 of Title 23, Highways, provided that the Secretary of Transportation shall carry out the provisions of this chapter [the National Traffic and Motor Vehicle Safety Act of 1966] through the National Highway Traffic Safety Administration and the Administrator thereof.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2052 of this title.

§ 1392. Motor vehicle safety standards

(a) Establishment

The Secretary shall establish by order appropriate Federal Motor vehicle safety standards. Each such Federal motor vehicle safety standard shall be practicable, shall meet the need for motor vehicle safety, and shall be stated in objective terms.

(b) Applicability of administrative procedure provisions

Subchapter II of chapter 5, and chapter 7, of title 5 shall apply to all orders establishing, amending, or revoking a Federal motor vehicle safety standard under this subchapter.

(c) Effective date of orders

Each order establishing a Federal motor vehicle safety standard shall specify the date such standard is to take effect which shall not be sooner than one hundred and eighty days or later than one year from the date such order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding.

(d) Supremacy of federal standards; allowable higher standards for vehicles used by federal or state governments

Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal Standard. Nothing in this section shall be construed to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to motor vehicles or motor vehicle equipment procured for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.

(e) Amendment and revocation of standards

The Secretary may by order amend or revoke any Federal motor vehicle safety standard established under this section. Such order shall specify the date on which such amendment or revocation is to take effect which shall not be sooner than one hundred and eighty days or later than one year from the date the order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding.

(f) Factors to be considered in prescribing standards

In prescribing standards under this section, the Secretary shall—

(1) consider relevent available motor vehicle safety data, including the results of research, development, testing and evaluation activities conducted pursuant to this chapter;

(2) consult with the Vehicle Equipment Safety Commission and such other State or interstate agencies (including legislative committees) as he deems appropriate;

(3) consider whether any such proposed standard is reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed; and

(4) consider the extent to which such standards will contribute to carrying out the purposes of this chapter.

(g) Interstate motor carriers and carriers of explosives and other dangerous articles

In prescribing safety regulations covering motor vehicles subject to part II of the Interstate Commerce Act, as amended (49 U.S.C. 301 et seq.), or the Transportation of Explosives Act, as amended (18 U.S.C. 831-835), the Interstate Commerce Commission shall not adopt or continue in effect any safety regulation which differs from a motor vehicle safety standard issued by the Secretary under this subchapter, except that nothing in this subsection shall be deemed to prohibit the Interstate Commerce Commission from prescribing for any motor vehicle operated by a carrier subject to regulation under either or both of such Acts, a safety regulation which imposes a higher standard of performance subsequent to its manufacture than that required to comply with the applicable Federal standard at the time of manufacture.

(h) Issuance of initial federal safety standards

The Secretary shall issue initial Federal motor vehicle safety standards based upon existing safety standards on or before January 31, 1967. On or before January 31, 1968, the Secretary shall issue new and revised Federal motor vehicle safety standards under this subchapter.

(i) Schoolbus and schoolbus equipment safety standards; study and report to Congress

(1)(A) Not later than 6 months after October 27, 1974, the Secretary shall publish proposed Federal motor vehicle safety standards to be applicable to schoolbuses and schoolbus equipment. Such proposed standards shall include minimum standards for the following aspects of performance:

(i) Emergency exits.
(ii) Interior protection for occupants.
(iii) Floor strength.
(iv) Seating systems.
(v) Crash worthiness of body and frame (including protection against rollover hazards).
(vi) Vehicle operating systems.
(vii) Windows and windshields.
(viii) Fuel systems.

(B) Not later than 15 months after October 27, 1974, the Secretary shall promulgate Federal motor vehicle safety standards which shall provide minimum standards for those aspects of performance set out in clauses (i) through (viii) of subparagraph (A) of this paragraph, and which shall apply to each schoolbus and item of schoolbus equipment which is manufactured in or imported into the United States on or after April 1, 1977.

(2) The Secretary may prescribe regulations requiring that any schoolbus be test-driven by the manufacturer before introduction into commerce.

(3) Not later than six months after July 8, 1976, the Secretary shall conduct a study and report to Congress on (A) the factors relating to the schoolbus vehicle which contribute to the occurrence of schoolbus accidents and resultant injuries, and (B) actions which can be taken to reduce the likelihood of occurrence of such accidents and severity of such injuries. Such study shall consider, among other things, the extent to which injuries may be reduced through the use of seat belts and other occupant restraint systems in schoolbus accidents, and an examination of the extent to which the age of schoolbuses increases the likelihood of accidents and resultant injuries.

(Pub. L. 89-563, title I, § 103, Sept. 9, 1966, 80 Stat. 719; Pub. L. 93-492, title II, § 202, Oct. 27, 1974, 88 Stat. 1484; Pub. L. 94-346, §§ 2, 3, July 8, 1976, 90 Stat. 815.)

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in subsec. (g), is act Feb. 4, 1887, ch. 104, 24 Stat. 379. Part II of the Interstate Commerce Act was added by act Aug. 9, 1935, ch. 498, 49 Stat. 543, and is classified generally to chapter 8 (§ 301 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of Title 49 and Tables volume.

The Transportation of Explosives Act, as amended, referred to in subsec. (g), is act June 25, 1948, ch. 645, 62 Stat. 738, which is classified generally to chapter 39 (§ 831 et seq.) of Title 18, Crimes and Criminal Procedure. For complete classification of this Act to the Code, see Tables volume.

CODIFICATION

In subsec. (b), "Subchapter II of chapter 5, and chapter 7, of title 5" was substituted for "the Administrative Procedure Act" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1976—Subsec. (i)(1)(B). Pub. L. 94-346, § 2, substituted "April 1, 1977" for "the expiration of the nine-month period which begins on the date of promulgation of such safety standards".

Subsec. (i)(3). Pub. L. 94-346, § 3, added subsec. (i)(3).

1974—Subsec. (i). Pub. L. 93-492 added subsec. (i).

FUEL SYSTEM INTEGRITY STANDARD

Section 108 of Pub. L. 93-492 provided that:

(a) *Ratification of Standard.*—Federal Motor Vehicle Safety Standard Number 301 (49 CFR 571.301-75; Docket No. 73-20, Notice 2) as published on March 21, 1974 (39 F.R. 10588-10590) shall take effect on the dates prescribed in such standard (as so published).

"(b) *Amendment or repeal of standard.*—The Secretary may amend the standard described in subsection (a) in order to correct technical errors in the standard, and may amend or repeal such standard if he determines such amendment or repeal will not diminish the level of motor vehicle safety."

EX. ORD. NO. 11357. ADMINISTRATION OF CHAPTER THROUGH NATIONAL HIGHWAY SAFETY BUREAU AND ITS DIRECTOR

Ex. Ord. No. 11357, June 6, 1967, 32 F.R. 8225, provided:

By virtue of the authority vested in me as President of the United States by Section 201 of the Highway Safety Act of 1966, as amended (80 Stat. 735, 943) [set out as a note under section 401 of Title 23, Highways], and by Section 3(f)(3) of the Department of Transportation Act (80 Stat. 932) [section 1652(f)(3) of Title 49, Transportation], it is hereby ordered that the provisions of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (80 Stat. 718, 943) [this chapter], shall be carried out through the National Highway Safety Bureau and the Director thereof.

LYNDON B. JOHNSON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1394, 1397, 1402, 1410a, 1411, 1412 of this title.

§ 1393. National Motor Vehicle Safety Advisory Council

(a) Establishment; membership; "representative of the general public"; publication of names of members; selection of Chairman

(1) The Secretary shall establish a National Motor Vehicle Safety Advisory Council, a majority of which shall be representatives of the general public, including representatives of State and local governments, and the remain-

der shall include representatives of motor vehicle manufacturers, motor vehicle equipment manufacturers, and motor vehicle dealers.

(2) For the purposes of this section, the term "representative of the general public" means an individual who (A) is not in the employ of, or holding any official relation to any person who is (i) a manufacturer, dealer, or distributor, or (ii) a supplier of any manufacturer, dealer, or distributor, (B) does not own stock or bonds of substantial value in any person described in subparagraph (A)(i) or (ii), and (C) is not in any other manner directly or indirectly pecuniarily interested in such a person. The Secretary shall publish the names of the members of the Council annually and shall designate which members represent the general public. The Chairman of the Council shall be chosen by the Council from among the members representing the general public.

(b) Consultation with Secretary of Transportation

The Secretary shall consult with the Advisory Council on motor vehicle safety standards under this chapter.

(c) Compensation of members; travel expenses

Members of the National Motor Vehicle Safety Advisory Council may be compensated at a rate not to exceed $100 per diem (including travel time) when engaged in the actual duties of the Advisory Council. Such members, while away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, for persons in the Government service employed intermittently. Payments under this section shall not render members of the Advisory Council employees or officials of the United States for any purpose.

(Pub. L. 89-563, title I, § 104, Sept. 9, 1966, 80 Stat. 720; Pub. L. 93-492, title I, § 107, Oct. 27, 1974, 88 Stat. 1481.)

REPEAL OF SECTION

Section 170(b) of Pub. L. 93-492 provided for the repeal of this section effective October 1, 1977.

CODIFICATION

In subsec. (c), "section 5703 of title 5" was substituted for "section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b-2)"on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-492 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment of subsec. (a) by Pub. L. 93-492 effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

§ 1394. Judicial review of orders establishing standards; additional evidence before Secretary; certified copy of transcript

(a)(1) In a case of actual controversy as to the validity of any order under section 1392 of this title, any person who will be adversely affected by such order when it is effective may at any time prior to the sixtieth day after such order is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based his order, as provided in section 2112 of title 28.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(3) Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to review the order in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such section.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(5) Any action instituted under this subsection shall survive, notwithstanding any change in the person occupying the office of Secretary of [1] any vacancy in such office.

(6) The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

(b) A certified copy of the transcript of the record and proceedings under this section shall be furnished by the Secretary to any interested party at his request, and payment of the costs thereof, and shall be admissible in any criminal, exclusion of imports, or other proceeding arising under or in respect of this subchapter, irrespective of whether proceedings with respect to the order have previously been initiated or become final under subsection (a) of this section.

(Pub. L. 89-563, title I, § 105, Sept. 9, 1966, 80 Stat. 720.)

CODIFICATION

In subsec. (a)(3), "chapter 7 of title 5" was substituted for "section 10 of the Administrative Procedure Act (5 U.S.C. 1009)" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

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[1] So in original.

§ 1395. Research, testing, development, and training in traffic and vehicle safety

(a) Scope of research

The Secretary shall conduct research, testing, development, and training necessary to carry out the purposes of this subchapter, including, but not limited to—

(1) collecting data from any source for the purpose of determining the relationship between motor vehicle or motor vehicle equipment performance characteristics and (A) accidents involving motor vehicles, and (B) the occurrence of death, or personal injury resulting from such accidents;

(2) procuring (by negotiation or otherwise) experimental and other motor vehicles or motor vehicle equipment for research and testing purposes;

(3) selling or otherwise disposing of test motor vehicles and motor vehicle equipment and reimbursing the proceeds of such sale or disposal into the current appropriation available for the purpose of carrying out this subchapter.

(b) Grants for research

The Secretary is authorized to conduct research, testing, development, and training as authorized to be carried out by subsection (a) of this section by making grants for the conduct of such research, testing, development, and training to States, interstate agencies, and nonprofit institutions.

(c) Availability of developed data to the general public

Whenever the Federal contribution for any research or development activity authorized by this chapter encouraging motor vehicle safety is more than minimal, the Secretary shall include in any contract, grant, or other arrangement for such research or development activity, provisions effective to insure that all information, uses, processes, patents, and other developments resulting from that activity will be made freely and fully available to the general public. Nothing herein shall be construed to deprive the owner of any background patent of any right which he may have thereunder.

(Pub. L. 89-563, title I, § 106, Sept. 9, 1966, 80 Stat. 721.)

§ 1396. Cooperation of Secretary with governmental and private agencies in developing standards

The Secretary is authorized to advise, assist, and cooperate with, other Federal departments and agencies, and State and other interested public and private agencies, in the planning and development of—

(1) motor vehicle safety standards;

(2) methods for inspecting and testing to determine compliance with motor vehicle safety standards.

(Pub. L. 89-563, title I, § 107, Sept. 9, 1966, 80 Stat. 721.)

§ 1397. Prohibition against manufacture, sale, delivery, or importation of substandard vehicles and against rendering inoperative certain devices, elements of design or motor vehicle equipment

(a) Access to records; certificate; notification of defect; "motor vehicle repair business" defined; exemptions from inoperation restriction; exemption of safety belt interlocks and continuous buzzers

(1) No person shall—

(A) manufacture for sale, sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or item of motor vehicle equipment manufactured on or after the date any applicable Federal motor vehicle safety standard takes effect under this subchapter unless it is in conformity with such standard except as provided in subsection (b) of this section:

(B) fail or refuse access to or copying records, or fail to make reports or provide information, or fail or refuse to permit entry or inspection, as required under section 1401 of this title; fail to keep specified records in accordance with such section; or fail or refuse to permit impounding, as required under section 1401(a) of this title;

(C) fail to issue a certificate required by section 1403 of this title, or issue a certificate to the effect that a motor vehicle or item of motor vehicle equipment conforms to all applicable Federal motor vehicle safety standards, if such person in the exercise of due care has reason to know that such certificate is false or misleading in a material respect;

(D) fail—

(i) to furnish notification,

(ii) to remedy any defect or failure to comply, or

(iii) to maintain records,

as required by part B of this subchapter; or fail to comply with any order or other requirement applicable to any manufacturer, distributor, or dealer pursuant to such part B;

(E) fail to comply with any rule, regulation, or order issued under section 1401 or 1403 of this title;

(F) to fail to comply with regulations of the Secretary under section 1392(i)(2) of this title.

(2)(A) No manufacturer, distributor, dealer, or motor vehicle repair business shall knowingly render inoperative, in whole or part, any device or element of design installed on or in a motor vehicle or item of motor vehicle equipment in compliance with an applicable Federal motor vehicle safety standard, unless such manufacturer, distributor, dealer, or repair business reasonably believes that such vehicle or item of equipment will not be used (other than for testing or similar purposes in the course of maintenance or repair) during the time such device or element of design is rendered inoperative. For purposes of this paragraph, the term "motor vehicle repair business" means any person who holds himself out to the public as in the business of repairing motor vehicles or motor vehicle equipment for compensation.

(B) The Secretary may by regulation exempt any person from this paragraph if he determines that such exemption is consistent with motor vehicle safety and the purposes of this chapter. The Secretary may prescribe regulations defining the term "render inoperative".

(C) This paragraph shall not apply with respect to the rendering inoperative of (i) any safety belt interlock (as defined in section 1410b(f)(1) of this title) or (ii) any continuous buzzer (as defined in section 1410b(f)(4) of this title) designed to indicate that safety belts are not in use.

(D) Paragraph (1)(A) of this subsection shall not apply to the sale or offering for sale of any motor vehicle which has such a buzzer or interlock rendered inoperative by a dealer at the request of the first purchaser of such vehicle.

(b) Sale or delivery of used vehicles; federal standards for used vehicles; good faith failure to conform to federal safety standards; importation of substandard vehicles

(1) Paragraph (1)(A) of subsection (a) of this section shall not apply to the sale, the offer for sale, or the introduction or delivery for introduction in interstate commerce of any motor vehicle or motor vehicle equipment after the first purchase of it in good faith for purposes other than resale. In order to assure a continuing and effective national traffic safety program, it is the policy of Congress to encourage and strengthen the enforcement of State inspection of used motor vehicles. Therefore to that end the Secretary shall conduct a thorough study and investigation to determine the adequacy of motor vehicle safety standards and motor vehicle inspection requirements and procedures applicable to used motor vehicles in each State, and the effect of programs authorized by this subchapter upon such standards, requirements, and procedures for used motor vehicles, and report to Congress as soon as practicable but not later than September 9, 1967, the results of such study, and recommendations for such additional legislation as he deems necessary to carry out the purposes of this chapter. As soon as practicable after the submission of such report, but no later than one year from the date of submission of such report, the Secretary, after consultation with the Council and such interested public and private agencies and groups as he deems advisable shall establish uniform Federal motor vehicle safety standards applicable to all used motor vehicles. Such standards shall be expressed in terms of motor vehicle safety performance. The Secretary is authorized to amend or revoke such standards pursuant to this chapter.

(2) Paragraph (1)(A) of subsection (a) of this section shall not apply to any person who establishes that he did not have reason to know in the exercise of due care that such vehicle or item of motor vehicle equipment is not in conformity with applicable Federal motor vehicle safety standards, or to any person who, prior to such first purchase, holds a certificate issued by the manufacturer or importer of such motor vehicle or motor vehicle equipment, to the effect that such vehicle or equipment conforms to all applicable Federal motor vehicle safety standards, unless such person knows that such vehicle or equipment does not so conform.

(3) A motor vehicle or item of motor vehicle equipment offered for importation in violation of paragraph (1)(A) of subsection (a) of this section shall be refused admission into the United States under joint regulations issued by the Secretary of the Treasury and the Secretary; except that the Secretary of the Treasury and the Secretary may, by such regulations, provide for authorizing the importation of such motor vehicle or item of motor vehicle equipment into the United States upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or item of motor vehicle equipment will be brought into conformity with any applicable Federal motor vehicle safety standard prescribed under this subchapter, or will be exported or abandoned to the United States.

(4) The Secretary of the Treasury and the Secretary may, by joint regulations, permit the temporary importation of any motor vehicle or item of motor vehicle equipment after the first purchase of it in good faith for purposes other than resale.

(5) Paragraph (1)(A) of subsection (a) of this section shall not apply in the case of a motor vehicle or item of motor vehicle equipment intended solely for export, and so labeled or tagged on the vehicle or item itself and on the outside of the container, if any, which is exported.

(c) Continuation of common law liability

Compliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law.

(Pub. L. 89-563, title I, § 108, Sept. 9, 1966, 80 Stat. 722; Pub. L. 93-492, title I, § 103(a), title II, § 203, Oct. 27, 1974, 88 Stat. 1477, 1485.)

AMENDMENTS

1974—Subsec. (a)(1). Pub. L. 93-492, §§ 103(a)(1)(A), (2)(A), (B), (3), 203, designated former provisions as par. (1) and redesignated former pars. (1) to (4) as subpars. (A) to (D); inserted in subpar. (B) prohibition against failure to keep specified records and against failure or refusal to permit impounding; added subpar. (E); substituted subpar. (D) provisions for prior prohibition against failure to furnish notification of any defect as required by section 1402 of this title; and added subpar. (F), respectively.

Subsec. (a)(2). Pub. L. 93-492, § 103(a)(1)(A), added par. (2).

Subsecs. (b)(1) to (3), (5). Pub. L. 93-492, § 103(a)(1)(B), substituted reference to paragraph "(1)(A)" for "(1)" in pars. (1) to (3) and (5).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 103(a)(1)(A) and 103(a)(1)(B), (2), and (3) of Pub. L. 93-492 effective Oct. 27, 1974, and on sixtieth day after Oct. 27, 1974, respectively, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1398 of this title.

§ 1398. Civil penalties; Secretary's authority to compromise

(a) Whoever violates any provision of section 1397 of this title, or any regulation issued thereunder, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. Such violation of a provision of section 1397 of this title, or regulations issued thereunder, shall constitute a separate violation with respect to each motor vehicle or item of motor vehicle equipment or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty shall not exceed $800,000 for any related series of violations.

(b) Any such civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(Pub. L. 89-563, title I, § 109, Sept. 9, 1966, 80 Stat. 723; Pub. L. 93-492, title I, § 103(b), Oct. 27, 1974, 88 Stat. 1478.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-492 increased to $800,000 from $400,000 the limitation of maximum civil penalty for related series of violations.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-492 effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1399, 1415 of this title.

§ 1399. Jurisdiction of United States District Court

(a) Restraining violations of motor vehicle standards; injunction; notice; opportunity to achieve compliance

The United States district courts shall have jurisdiction, for cause shown and subject to the provisions of rule 65(a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this subchapter (or rules, regulations or orders thereunder), or to restrain the sale, offer for sale, or the introduction or delivery for introduction, in interstate commerce, or the importation into the United States, of any motor vehicle or item of motor vehicle equipment which is determined, prior to the first purchase of such vehicle in good faith for purposes other than resale, not to conform to applicable Federal motor vehicle safety standards prescribed pursuant to this subchapter, or to contain a defect (A) which relates to motor vehicle safety and (B) with respect to which notification has been given under section 1411 or has been required to be given under section 1412(b) of this title, upon petition by the appropriate United States attorney or the Attorney General on behalf of the United States. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views, and, except in the case of a knowing and willful violation, shall afford him reasonable opportunity to achieve compliance or to remedy the defect. The failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief.

(b) Criminal contempt; trial by jury

In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this subchapter, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(c) Venue

Except as provided in section 1415(a) of this title, actions under subsection (a) of this section and section 1398(a) of this title may be brought in the district wherein any act or transaction constituting the violation occurred, or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found.

(d) Subpoenas

In any actions brought under subsection (a) of this section and section 1398(a) of this title, subpoenas for witnesses who are required to attend a United States district court may run into any other district.

(e) Designation by manufacturers offering vehicle for importation of agent for service of process

It shall be the duty of every manufacturer offering a motor vehicle or item of motor vehicle equipment for importation into the United States to designate in writing an agent upon whom service of all administrative and judicial processes, notices, orders, decisions and requirements may be made for and on behalf of said manufacturer, and to file such designation with the Secretary, which designation may from time to time be changed by like writing, similarly filed. Service of all administrative and judicial processes, notices, orders, decisions and requirements may be made upon said manufacturer by service upon such designated agent at his office or usual place of residence with like effects as if made personally upon said manufacturer, and in default of such designation of such agent, service of process, notice, order, requirement or decision in any proceeding before the Secretary or in any judicial proceeding for enforcement of this subchapter or any standards prescribed pursuant to this subchapter may be made by posting such process, notice, order, requirement or decision in the Office of the Secretary.

(Pub. L. 89-563, title I, § 110, Sept. 9, 1966, 80 Stat. 723; Pub. L. 93-492, title I, §§ 102(b)(2), 103(c), Oct. 27, 1974, 88 Stat. 1477, 1478.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-492, § 103(c), inserted in first sentence "(or rules, regulations or orders thereunder)" following "violations of this subchapter" and "or to contain a defect (A) which relates to motor vehicle safety and (B) with respect to which notification has been given under section 1411 or has been required to be given under section 1412(b) of this title," following "pursuant to this subchapter,".

Subsec. (c). Pub. L. 93-492, § 102(b)(2), inserted introductory text "Except as provided in section 1415(a) of this title,".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-492 effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1415, 1424 of this title.

§ 1400. Noncompliance with safety standards

(a) Repurchase from distributor or dealer of vehicle not meeting standards

If any motor vehicle or item of motor vehicle equipment is determined not to conform to applicable Federal motor vehicle safety standards, or contains a defect which relates to motor vehicle safety, after the sale of such vehicle or item of equipment by a manufacturer or a distributor to a distributor or a dealer and prior to the sale of such vehicle or item of equipment by such distributor or dealer:

(1) The manufacturer or distributor, as the case may be, shall immediately repurchase such vehicle or item of motor vehicle equipment from such distributor or dealer at the price paid by such distributor or dealer, plus all transportation charges involved and a reasonable reimbursement of not less than 1 per centum per month of such price paid prorated from the date of notice of such nonconformance to the date of repurchase by the manufacturer or distributor; or

(2) In the case of motor vehicles, the manufacturer or distributor, as the case may be, at his own expense, shall immediately furnish the purchasing distributor or dealer the required conforming part or parts or equipment for installation by the distributor or dealer on or in such vehicle and for the installation involved the manufacturer shall reimburse such distributor or dealer for the reasonable value of such installation plus a reasonable reimbursement of not less than 1 per centum per month of the manufacturer's or distributor's selling price prorated from the date of notice of such nonconformance to the date such vehicle is brought into conformance with applicable Federal standards: *Provided, however,* That the distributor or dealer proceeds with reasonable diligence with the installation after the required part, parts or equipment are received.

(b) Civil action against manufacturer or distributor refusing to repurchase substandard vehicles; period of limitation

In the event any manufacturer or distributor shall refuse to comply with the requirements of paragraphs (1) and (2) of subsection (a) of this section, then the distributor or dealer, as the case may be, to whom such nonconforming vehicle or equipment has been sold may bring suit against such manufacturer or distributor in any district court of the United States in the district in which said manufacturer or distributor resides, or is found, or has an agent, without respect to the amount in controversy, and shall recover the damage by him sustained, as well as all court costs plus reasonable attorneys' fees. Any action brought pursuant to this section shall be forever barred unless commenced within three years after the cause of action shall have accrued.

(c) Determination of reimbursements for required installations

The value of such installations and such reasonable reimbursements as specified in subsection (a) of this section shall be fixed by mutual agreement of the parties, or failing such agreement, by the court pursuant to the provisions of subsection (b) of this section.

(Pub L. 89-563, title I, § 111, Sept. 9, 1966, 80 Stat. 724.)

§ 1401. Inspection and investigation: enforcement of this subchapter and rules, regulations, or orders thereunder; motor vehicle accidents

(a)(1) Results of investigations given to Secretary of Treasury or Attorney General for action; cooperation with non-federal officials

The Secretary is authorized to conduct any inspection or investigation—

(A) which may be necessary to enforce this subchapter or any rules, regulations, or orders issued thereunder, or

(B) which relates to the facts, circumstances, conditions, and causes of any motor vehicle accident and which is for the purposes of carrying out his functions under this chapter.

The Secretary shall furnish the Attorney General and, when appropriate, the Secretary of the Treasury any information obtained indicating noncompliance with this subchapter or any rules, regulations, or orders issued thereunder, for appropriate action. In making investigations under subparagraph (B), the Secretary shall cooperate with appropriate State and local officials to the greatest extent possible consistent with the purposes of this subsection.

(2) Entry into factory, warehouse, manufacturing establishment, or premises with motor vehicles or vehicular equipment; impoundment of motor vehicles; inspection with reasonable promptness

For purposes of carrying out paragraph (1), officers or employees duly designated by the Secretary, upon presenting appropriate credentials and written notice to the owner, operator, or agent in charge, are authorized at reasonable times and in a reasonable manner—

(A) to enter (i) any factory, warehouse, or establishment in which motor vehicles or items of motor vehicle equipment are manufactured, or held for introduction into interstate commerce or are held for sale after such introduction, or (ii) any premises where a motor vehicle or item of motor vehicle equipment involved in a motor vehicle accident is located;

(B) to impound, for a period not to exceed 72 hours, any motor vehicle or item of motor vehicle equipment involved in a motor vehicle accident; and

(C) to inspect any factory, warehouse, establishment, vehicle, or equipment referred to in subparagraph (A) or (B).

Each inspection under this paragraph shall be commenced and completed with reasonable promptness.

(3) Compensation to vehicle owner; "motor vehicle accident" defined

(A) Whenever, under the authority of paragraph (2)(B), the Secretary inspects or temporarily impounds for the purpose of inspection any motor vehicle (other than a vehicle subject to part II of the Interstate Commerce Act [49 U.S.C. 301 et seq.]) or an item of motor vehicle equipment, he shall pay reasonable compensation to the owner of such vehicle to the extent that such inspection or impounding results in the denial of the use of the vehicle to its owner or in the reduction in value of the vehicle.

(B) As used in this subsection, "motor vehicle accident" means an occurrence associated with the maintenance, use, or operation of a motor vehicle or item of motor vehicle equipment in or as a result of which any person suffers death or personal injury, or in which there is property damage.

(b) Records from manufacturers; reports from manufacturers, dealers, or distributors; inspections and examination of relevant documents; records from distributors or dealers

Every manufacturer of motor vehicles and motor vehicle equipment shall establish and maintain such records and every manufacturer, dealer, or distributor shall make such reports, as the Secretary may reasonably require to enable him to determine whether such manufacturer, dealer, or distributor has acted or is acting in compliance with this subchapter or any rules, regulations, or orders issued thereunder and shall, upon request of an officer or employee duly designated by the Secretary, permit such officer or employee to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer, dealer, or distributor has acted or is acting in compliance with this subchapter or any rules, regulations, or orders issued thereunder. Nothing in this subsection shall be construed as imposing recordkeeping requirements on distributors or dealers, except those requirements imposed under section 1418 of this title and regulations and orders promulgated thereunder.

(c) Procedure; hearings; testimony; sessions; paths; subpenas; access to and copies of documentary evidence; general or special orders for reports or answers to specific questions; contempt of court; witnesses fees and mileage; information from other Federal agencies; limitations of authority to provide information unaffected; detail of personnel

(1) For the purpose of carrying out the provisions of this subchapter, the Secretary, or on the authorization of the Secretary, any officer or employee of the Department of Transportation may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, or such officer or employee, deems advisable.

(2) In order to carry out the provisions of this subchapter, the Secretary or his duly authorized agent shall at all reasonable times have access to, and for the purposes of examination the right to copy, any documentary evidence of any person having materials or information relevant to any function of the Secretary under this subchapter.

(3) The Secretary is authorized to require, by general or special orders, any person to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary under this subchapter. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe.

(4) Any of the district courts of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena or order of the Secretary or such officer or employee issued under paragraph (1) or paragraph (3) of this subsection, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(5) Witnesses summoned pursuant to this subsection shall be paid the same fees and mileage which are paid witnesses in the courts of the United States.

(6)(A) The Secretary is authorized to request from any department, agency or instrumentality of the Federal Government such statistics, data, program reports, and other materials as he deems necessary to carry out his functions under this subchapter; and each such department, agency, or instrumentality is authorized and directed to cooperate with the Secretary and to furnish such statistics, data, program reports, and other materials to the Department of Transportation upon request made by the Secretary. Nothing in this subparagraph shall be deemed to affect any provision of law limiting the authority of an agency, department, or instrumentality of the Federal Government to provide information to another agency, department, or instrumentality of the Federal Government.

(B) The head of any Federal department, agency, or instrumentality is authorized to detail, on a reimbursable basis, any personnel of such department, agency, or instrumentality to assist in carrying out the duties of the Secretary under this subchapter.

(d) Performance and technical data; supplying data to each prospective purchaser and to first purchaser

Every manufacturer of motor vehicles and motor vehicle equipment shall provide to the Secretary such performance data and other technical data related to performance and safety as may be required to carry out the purposes of this chapter. The Secretary is authorized to require the manufacturer to give such notification of such performance and technical data as the Secretary determines necessary to carry out the purposes of this chapter in the following manner—

(1) to each prospective purchaser of a motor vehicle or item of equipment before its first sale for purposes other than resale at each location where any such manufacturer's vehicles or items of motor vehicle equipment are offered for sale by a person with whom such manufacturer has a contractual, proprietary,

or other legal relationship in a manner determined by the Secretary to be appropriate which may include, but is not limited to, printed matter (A) available for retention by such prospective purchaser and (B) sent by mail to such prospective purchaser upon his request; and

(2) to the first person who purchases a motor vehicle or item of equipment for purposes other than resale, at the time of such purchase, in printed matter placed in the motor vehicle or attached to or accompanying the item of motor vehicle equipment.

(e) Confidential information and trade secrets

Except as otherwise provided in section 1418(a)(2) and section 1402(b) of this title, all information reported to or otherwise obtained by the Secretary or his representative pursuant to this subchapter which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this subchapter or when relevant in any proceeding under this subchapter. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress.

(Pub. L. 89-563, title I, § 112, Sept. 9, 1966, 80 Stat. 725; Pub. L. 91-265, § 3, May 22, 1970, 84 Stat. 262; Pub. L. 93-492, title I, § 104, Oct. 27, 1974, 88 Stat. 1478.)

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in subsec. (a)(3)(A), is act Feb. 4, 1887, ch. 104, 24 Stat. 379. Part II of the Interstate Commerce Act was added by act Aug. 9, 1935, ch. 498, 49 Stat. 543, and is classified generally to chapter 8 (§ 301 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of Title 49 and Tables volume.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-492, § 104(a), designated existing provisions as par. (1), substituted provisions for enforcement of this subchapter and rules, regulations, and orders issued thereunder and compliance therewith for prior provision for enforcement of Federal vehicle safety standards and compliance therewith, and added par. (1) provisions respecting inspection or investigation of motor vehicle accidents, cooperation with nonfederal officials and pars. (2) and (3).

Subsec. (b). Pub. L. 93-492, § 104(a), redesignated former subsec. (c) as (b), substituted requirement for conformity with rules, regulations, or orders issued under this subchapter for prior required conformity with motor vehicle safety standards prescribed pursuant to this subchapter, required dealer and distributor reports and conformity with the rules, regulations, and orders issued under this subchapter. Former subsec. (b) provisions for entry into factory, warehouse or manufacturing establishment and for reasonable inspection incorporated in subsec. (a) of this section.

Subsec. (c). Pub. L. 93-492, § 104(a) added subsec. (c). Former subsec. (c) redesignated (b).

Subsec. (e). Pub. L. 93-492, § 104(b), inserted introductory text "Except as otherwise provided in section 1418(a)(2) and section 1402(b) of this title," and substituted "pursuant to this subchapter" for "pursuant to subsection (b) or (c) of this section".

1970—Subsec. (d). Pub. L. 91-265 required that notice of performance and technical data be given to prospective purchasers of a motor vehicle or item of equipment before its first sale for purposes other than resale, at each location where offered for sale, by a person having a contractual, proprietary, or legal relation to the manufacturer in a manner including, but not limited to, printed matter retainable by the prospective purchaser and sent to him by mail upon request and also that notice be given to the first person who purchases a motor vehicle or item of equipment, other than for resale, in the form of printed matter placed in the vehicle or attached to or accompanying the item of equipment.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-492 effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1397 of this title.

§ 1402. Cost information

(a) Submission and evaluation

Whenever any manufacturer opposes an action of the Secretary under section 1392 of this title, or under any other provision of this chapter, on the ground of increased cost, the manufacturer shall submit such cost information (in such detail as the Secretary may by regulation or order prescribe) as may be necessary in order to properly evaluate the manufacturer's statement. The Secretary shall thereafter promptly prepare an evaluation of such cost information.

(b) Availability to public; publication in Federal Register; confidentiality of trade secrets and other confidential matter; information to committees of Congress

(1) Subject to paragraph (2), such cost information together with the Secretary's evaluation thereof, shall be available to the public. Notice of the availability of such information shall be published in the Federal Register.

(2) If the manufacturer satisfies the Secretary that any portion of such information contains a trade secret or other confidential matter, such portion may be disclosed to the public only in such manner as to preserve the confidentiality of such trade secret or other confidential matter, except that any such information may be disclosed to other officers or employees concerned with carrying out this subchapter or when relevant in any proceeding under this subchapter. Nothing in this subsection shall authorize the withholding of information by the Secretary or any officer or employee under his control, from the duly authorized committees of the Congress.

(c) Definition

For purposes of this section, the term "cost information" means information with respect to alleged cost increases resulting from action by the Secretary, in such form as to permit the public and the Secretary to make an informed judgment on the validity of the manufacturer's statements. Such term includes both the manufacturer's cost and the cost to retail purchasers.

(d) Rules and regulations

The Secretary is authorized to establish rules and regulations prescribing forms and procedures for the submission of cost information under this section.

(e) Authority of Secretary under other provisions unaffected

Nothing in this section shall be construed to restrict the authority of the Secretary to obtain or require submission of, information under any other provision of this chapter.

(Pub. L. 89-563, title I, § 113, as added Pub. L. 93-492, title I, § 105, Oct. 27, 1974, 88 Stat. 1480.)

CODIFICATION

Prior section 1402, Pub. L. 89-563, title I, § 113, Sept. 9, 1966, 80 Stat. 725; Pub. L. 91-265, § 4(a) to (c), May 22, 1970, 84 Stat. 262, which related to discovery of defects by manufacturer, providing in subsection: (a) notice to purchaser; (b) notification by certified mail; (c) form and requisites of notification; (d) Secretary's copy of all notices, bulletins, and communications sent by manufacturer to dealers and purchasers concerning defects and disclosure by Secretary; (e) notice by Secretary to manufacturer concerning defects relating to motor vehicle safety or failure to comply with safety standards, presentation of opposing views, and notice to purchasers of defects; (f) records of names and addresses of first purchaser; and (g) retreated tires, was repealed by section 102(a) of Pub. L. 93-492 effective on sixtieth day after Oct. 27, 1974 (see note under section 1409 of this title), and is now covered by sections 1411 to 1420 of this title.

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

SAVINGS PROVISION

Issuance of notification or requirement of such issuance respecting any defect or failure to comply under former section 1402(a), (e) of this title prior to effective date of title I of Pub. L. 93-492, which became effective on sixtieth day after Oct. 27, 1974, as precluding application of sections 1411 to 1420 of this title, see section 102(c) of Pub. L. 93-492, set out as a note under section 1411 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1403. Certification of conformity with motor vehicle safety standards; form and placement of certification

Every manufacturer or distributor of a motor vehicle or motor vehicle equipment shall furnish to the distributor or dealer at the time of delivery of such vehicle or equipment by such manufacturer or distributor the certification that each such vehicle or item of motor vehicle equipment conforms to all applicable Federal motor vehicle safety standards. In the case of an item of motor vehicle equipment such certification may be in the form of a label or tag on such item or on the outside of a container in which such item is delivered. In the case of a motor vehicle such certification shall be in the form of a label or tag permanently affixed to such motor vehicle.

(Pub. L. 89-563, title I, § 114, Sept. 9, 1966, 80 Stat. 726.)

EFFECTIVE DATE

Section 122 of Pub. L. 89-563 provided that: "The provisions of this title [this subchapter] for certification of motor vehicles and items of motor vehicle equipment shall take effect on the effective date of the first standard actually issued under section 103 of this title [section 1392 of this title]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1397 of this title.

§ 1404. Omitted

CODIFICATION

Section, Pub. L. 89-563, title I, § 115, Sept. 9, 1966, 80 Stat. 727, as amended by Pub. L. 89-670, §§ 3(f)(1), 8(i), Oct. 15, 1966, 80 Stat. 931, 943, and Pub. L. 90-83, § 10(b), Sept. 11, 1967, 81 Stat. 224, which authorized the Secretary of Transportation to carry out the provisions of this chapter [the National Traffic and Motor Vehicle Safety Act of 1966] through a National Trafic Safety Bureau, headed by a Traffic Safety Director, has been omitted as superseded and repealed by implication by section 201 of Pub. L. 89-564, as amended, which is set out as a note under section 401 of Title 23, Highways. Such section 201 established within the Department of Transportation a National Highway Traffic Safety Administration, headed by an Administrator; authorized the Secretary of Transportation to carry out this chapter through such Administration and Administrator; and repealed all provisions of law enacted prior to Dec. 31, 1970, which are inconsistent with such section 201, to the extent of such inconsistency.

§ 1405. Effect upon antitrust laws

Nothing contained herein shall be deemed to exempt from the antitrust laws of the United States any conduct that would otherwise be unlawful under such laws, or to prohibit under the antitrust laws of the United States any conduct that would be lawful under such laws.

(Pub. L. 89-563, title I, § 116, Sept. 9, 1966, 80 Stat. 727.)

REFERENCES IN TEXT

The antitrust laws of the United States, referred to in text, are classified generally to chapter 1 (§ 1 et seq.) of this title.

§ 1406. Use of testing and research facilities of public agencies

The Secretary, in exercising the authority under this subchapter, shall utilize the services, research and testing facilities of public agencies to the maximum extent practicable in order to avoid duplication.

(Pub. L. 89-563, title I, § 118, Sept. 9, 1966, 80 Stat. 728.)

§ 1407. Rules and regulations

The Secretary is authorized to issue, amend, and revoke such rules and regulations as he deems necessary to carry out this subchapter.

(Pub. L. 89-563, title I, § 119, Sept. 9, 1966, 80 Stat. 728.)

§ 1408. Annual report to Congress; contents; recommendations

(a) The Secretary shall prepare and submit to the President for transmittal to the Congress on July 1 of each year a comprehensive report on the administration of this chapter for the preceding calendar year. Such report shall include but not be restricted to (1) a thorough statistical compilation of the accidents and injuries occurring in such year; (2) a list of Federal motor vehicle safety standards prescribed or in effect in such year; (3) the degree of observance of applicable Federal motor vehicle standards; (4) a summary of all current research grants and contracts together with a description of the problems to be considered by such grants and contracts; (5) an analysis and evaluation, including relevant policy recommendations, of research activities completed and technological progress achieved during such year; (6) a statement of enforcement actions including judicial decisions, settlements, or pending litigation during such year; and (7) the extent to which technical information was disseminated to the scientific community and consumer-oriented information was made available to the motoring public.

(b) The report required by subsection (a) of this section shall contain such recommendations for additional legislation as the Secretary deems necessary to promote cooperation among the several States in the improvement of traffic safety and to strengthen the national traffic safety program.

(Pub. L. 89-563, title I, § 120, Sept. 9, 1966, 80 Stat. 728; Pub. L. 91-265, § 5, May 22, 1970, 84 Stat. 263; Pub. L. 93-492, title I, § 110(b), Oct. 27, 1974, 88 Stat. 1484.)

Amendments

1974—Subsec. (a). Pub. L. 93-492 substituted July 1 for March 1 as date for annual report.

1970—Subsec. (a). Pub. L. 91-265 substituted "(6) a statement of enforcement actions including judicial decisions, settlements, or pending litigation during such year; and (7)" for "and (6)".

Effective Date of 1974 Amendment

Amendment by Pub. L. 93-492 effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

§ 1409. Authorization of appropriations

There are authorized to be appropriated for the purpose of carrying out this chapter, not to exceed $13,000,000 for the transition period July 1, 1976, through September 30, 1976, $60,000,000 for the fiscal year ending September 30, 1977, and $60,000,000 for the fiscal year ending September 30, 1978.

(Pub. L. 89-563, title I, § 121, Sept. 9, 1966, 80 Stat. 788; Pub. L. 91-265, § 1, May 22, 1970, 84 Stat. 262; Pub. L. 92-548, § 2, Oct. 25, 1972, 86 Stat. 1159; Pub. L. 93-492, title I, § 101, Oct. 27, 1974, 88 Stat. 1470; Pub. L. 94-346, § 1, July 8, 1976, 90 Stat. 815.)

Amendments

1976—Pub. L. 94-346 substituted "$13,000,000 for the transition period July 1, 1976, through September 30, 1976, $60,000,000 for the fiscal year ending September 30, 1977, and $60,000,000 for the fiscal year ending September 30, 1978" for "$55,000,000 for the fiscal year ending June 30, 1975, and not to exceed $60,000,000 for the fiscal year ending June 30, 1976".

1974—Pub. L. 93-492 authorized appropriations of $55,000,000 and $60,000,000 for fiscal years ending June 30, 1975, and 1976, and deleted provision for $52,714,000 for fiscal year ending June 30, 1973.

1972—Pub. L. 92-548 substituted provisions authorizing to be appropriated for the purposes of carrying out this chapter $52,714,000 for the fiscal year ending June 30, 1973, for provisions authorizing to be appropriated for the purposes of carrying out the provisions of subchapter I of this chapter, other than those relating to tire standards, not to exceed $11,000,000 for fiscal year 1967, $17,000,000 for fiscal year 1968, and $23,000,000 for fiscal year 1969, for the purposes of carrying out the tire safety provisions of subchapter I of this chapter and subchapter II of this chapter, not to exceed $2,900,000 for fiscal year 1967, and $1,450,000 for fiscal years 1968 and 1969, and for the purposes of carrying out this chapter, other than subchapter III of this chapter, not to exceed $23,000,000 for the fiscal year 1970, and $40,000,000 for the fiscal years 1971 and 1972.

1970—Subsec. (c). Pub. L. 91-265 added subsec. (c).

Effective Date of 1974 Amendment

Section 111 of Pub. L. 93-492 provided that: "The amendments made by this title [enacting sections 1393(a)(2), 1397(a)(2) (A) to (C), 1402, 1410a, and 1411 to 1420; amending sections 1391(10), 1397(a)(1), (b), 1398(a), 1399(a), (c), 1401(a) to (c), (e), 1408(a), 1409, and 1424(a); and repealing prior section 1402 of this title] (other than section 109) [enacting section 1410b of this title] shall take effect on the sixtieth day after the date of enactment of this Act [Oct. 27, 1974]; except that section 108(a)(4)(D) of the National Traffic and Motor Vehicle Safety Act of 1966 (as added by section 103(a)(1)(A) of this Act) [probably means section 1397(a)(1)(D) of this title] shall take effect on the date of enactment of this Act [Oct. 27, 1974]."

§ 1410. Exemption from safety standards of motor vehicles

(a) Eligibility; procedure; criteria for temporary exemption or renewal of exemption; publication of notice of decision in Federal Register

Except as provided in subsection (d) of this section, upon application by a manufacturer at such time, in such manner, and containing such information as required in this section and as the Secretary shall prescribe, the Secretary may, after publication of notice and opportunity to comment and under such terms and conditions and to such extent as he deems appropriate, temporarily exempt or renew the exemption of a motor vehicle from any motor vehicle safety standard established under this subchapter if he finds—

(1)(A) that compliance would cause such manufacturer substantial economic hardship and that the manufacturer has, in good faith, attempted to comply with each standard from which it requests to be exempted,

(B) that such temporary exemption would facilitate the development or field evaluation of new motor vehicle safety features which provide a level of safety which is equivalent to or exceeds the level of safety established in each standard from which an exemption is sought,

(C) that such temporary exemption would facilitate the development or field evaluation of a low-emission motor vehicle and would not unreasonably degrade the safety of such vehicle, or

(D) that requiring compliance would prevent a manufacturer from selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles; and

(2) that such temporary exemption would be consistent with the public interest and the objectives of the chapter.

Notice of each decision to grant a temporary exemption and the reasons for granting it shall be published in the Federal Register.

(b) Permanent labeling of exempted motor vehicle; contents; notification of dealer and first purchaser of exemption

The Secretary shall require permanent labeling of each exempted motor vehicle. Such label shall either name or describe each of the standards from which the motor vehicle is exempted and be affixed to such exempted vehicles. The Secretary may require that written notification of the exemption be delivered to the dealer and first purchaser for purposes other than the resale of such exempted motor vehicle in such manner as he deems appropriate.

(c) Limitation periods for exemption or renewal; reapplication for renewal

(1) No exemption or renewal granted under paragraph (1)(A) of subsection (a) of this section shall be granted for a period longer than three years and no renewal shall be granted without reapplication and approval conforming to the requirements of subsection (a) of this section.

(2) No exemption or renewal granted under paragraph (1)(B), (1)(C), or (1)(D) of subsection (a) of this section shall be granted for a period longer than two years and no renewal shall be granted without reapplication and approval conforming to the requirements of subsection (a) of this section.

(d) Manufacturers eligible for exemptions

(1) No manufacturer whose total motor vehicle production in its most recent year of production exceeds 10,000, as determined by the Secretary, shall be eligible to apply for an exemption under paragraph (1)(A) of subsection (a) of this section.

(2) No manufacturer shall be eligible to apply for exemption under paragraph (1)(B), (1)(C), or (1)(D) of subsection (a) of this section for more than 2,500 vehicles to be sold in the United States in any 12 month period, as determined by the Secretary.

(e) Applications for exemptions; contents

Any manufacturer applying for an exemption on the basis of paragraph (1)(A) of subsection (a) of this section shall include in the application a complete financial statement showing the basis of the economic hardship and a complete description of its good faith efforts to comply with the standards. Any manufacturer applying for an exemption on the basis of paragraph (1)(B) of subsection (a) of this section shall include in the application research, development, and testing documentation establishing the innovational nature of the safety features and a detailed analysis establishing that the level of safety of the new safety feature is equivalent to or exceeds the level of safety established in the standard from which the exemption is sought. Any manufacturer applying for an exemption on the basis of paragraph (1)(C) of subsection (a) of this section shall include in the application research, development, and testing documentation establishing that the safety of such vehicle is not unreasonably degraded and that such vehicle is a low-emission motor vehicle. Any manufacturer applying for an exemption on the basis of paragraph (1)(D) of subsection (a) of this section shall include in the application a detailed analysis of how the vehicle provides an overall level of safety equivalent to or exceeding the overall level of safety of nonexempted motor vehicles.

(f) Promulgation of regulations for applications; disclosure of information contained in application

The Secretary shall promulgate regulations within 90 days (which time may be extended by the Secretary by a notice published in the Federal Register stating good cause therefor) after October 25, 1972, for applications for exemption from any motor vehicle safety standard provided for in this section. The Secretary may make public within 10 days of the date of filing an application under this section all information contained in such application or other information relevant thereto unless such information concerns or relates to a trade secret, or other confidential business information, not relevant to the application for exemption.

(g) Definitions

For the purpose of this section, the term "low-emission motor vehicle" means any motor vehicle which—

(1) emits any air pollutant in amounts significantly below new motor vehicle standards applicable under section 1857f-1 of title 42 at the time of manufacture to that type of vehicle; and

(2) with respect to all other air pollutants meets the new motor vehicle standards applicable under section 1857f-1 of title 42 at the time of manufacture to that type of vehicle.

(Pub. L. 89-563, title I, § 123, as added Pub. L. 90-283, Apr. 10, 1968, 82 Stat. 72, and amended Pub. L. 92-548, § 3, Oct. 25, 1972, 86 Stat. 1159.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92-548 added provisions making certain manufacturers under subsec. (d) of this section ineligible to apply for exemptions, requiring the Secretary to follow a prescribed procedure in granting temporary exemptions or renewing exemptions, including publication in the Federal Register of notice of each temporary exemption, and expanding the criteria for determining the necessity for granting exemptions, and struck out reference to limited production motor vehicles.

Subsec. (b). Pub. L. 92-548 substituted provisions requiring the permanent labeling of each exemption motor vehicle, and provisions that the Secretary may require that written notification of the exemption be delivered to the dealer and first purchaser for purposes other than resale of such exempted motor vehicle in such manner as he deems appropriate, for provisions that the Secretary shall require, in such manner as he deems appropriate, the notification of the dealer and of the first purchaser of a limited production motor vehicle (not including the dealer of such manufacturer) that such vehicle has been exempted from certain motor vehicle safety standards, and the standards from which it is exempted.

Subsec. (c). Pub. L. 92-548 substituted provisions setting forth limitation periods for length of exemption or renewal and requirements relating to reapplication for renewal, for provisions defining the term "limited production motor vehicle".

Subsec. (d). Pub. L. 92-548 substituted provisions setting forth eligibility requirements for manufacturers seeking exemptions, for provisions terminating the authority of the Secretary to grant exemptions three years after Apr. 10, 1968, and limiting the force and effect of exemptions to three years after the date such exemption was originally granted.

Subsecs. (e) to (g). Pub. L. 92-548 added subsecs. (e) to (g).

§ 1410a. Petitions of interested persons

(a) Requests for Secretary's commencement of proceedings

Any interested person may file with the Secretary a petition requesting him (1) to commence a proceeding respecting the issuance of an order pursuant to section 1392 of this title or to commence a proceeding to determine whether to issue an order pursuant to section 1412(b) of this title.

(b) Contents; factual statement; description of relief

Such petition shall set forth (1) facts which it is claimed establish that an order is necessary, and (2) a brief description of the substance of the order which it is claimed should be issued by the Secretary.

(c) Public hearings or appropriate investigation or proceeding

The Secretary may hold a public hearing or may conduct such investigation or proceeding as he deems appropriate in order to determine whether or not such petition should be granted.

(d) Time of determination; commencement of proceedings upon grant of petition; publication in Federal Register of reasons for denial of petition

Within 120 days after filing of a petition described in subsection (b) of this section, the Secretary shall either grant or deny the petition. If the Secretary grants such petition, he shall promptly commence the proceeding requested in the petition. If the Secretary denies such petition he shall publish in the Federal Register his reasons for such denial.

(e) Additional remedies

The remedies under this section shall be in addition to, and not in lieu of, other remedies provided by law.

(Pub. L. 89-563, title I, § 124, as added Pub. L. 93-492, title I, § 106, Oct. 27, 1974, 88 Stat. 1481.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

§ 1410b. Occupant restraint systems

(a) Amendment of Federal motor vehicle safety standard numbered 208; effective date

Not later than 60 days after October 27, 1974, the Secretary shall amend the Federal motor vehicle safety standard numbered 208 (49 CFR 571.208), so as to bring such standard into conformity with the requirements of paragraphs (1), (2), and (3) of subsection (b) of this section. Such amendment shall take effect not later than 120 days after October 27, 1974.

(b) Federal motor vehicle safety standard requirements

After the effective date of the amendment prescribed under subsection (a) of this section:

(1) No Federal motor vehicle safety standard may—

(A) have the effect of requiring, or

(B) provide that a manufacturer is permitted to comply with such standard by means of,

any continuous buzzer designed to indicate that safety belts are not in use, or any safety belt interlock system.

(2) Except as otherwise provided in paragraph (3), no Federal motor vehicle safety standard respecting occupant restraint systems may—

(A) have the effect of requiring, or

(B) provide that a manufacturer is permitted to comply with such standard by means of,

an occupant restraint system other than a belt system.

(3)(A) Paragraph (2) shall not apply to a Federal motor vehicle safety standard which provides that a manufacturer is permitted to comply with such standard by equipping motor vehicles manufactured by him with either—

(i) a belt system, or

(ii) any other occupant restraint system specified in such standard.

(B) Paragraph (2) shall not apply to any Federal motor vehicle safety standard which the Secretary elects to promulgate in accordance with the procedure specified in subsection (c) of this section, unless it is disapproved by both Houses of Congress by concurrent resolution in accordance with subsection (d) of this section.

(C) Paragraph (2) shall not apply to a Federal motor vehicle safety standard if at the time of promulgation of such standard (i) the 60-day period determined under subsection (d) of this section has expired with respect to any previously promulgated standard which the Secretary has elected to promulgate in accordance with subsection (c) of this section, and (ii) both Houses of Congress have not by concurrent resolution within such period disapproved such previously promulgated standard.

(c) Federal motor vehicle safety standard promulgation procedure; rule making requirement; data, views or arguments: presentation opportunity; transcript; notification of Congressional Committees; data, views, or arguments of Members of Congress; transmittal of standard to Congress and Congressional Committees

The procedure referred to in subsection (b)(3)(B) and (C) of this section in accordance with which the Secretary may elect to promulgate a standard is as follows:

(1) The standard shall be promulgated in accordance with section 1392 of this title, subject to the other provisions of this subsection.

(2) Section 553 of title 5 shall apply to such standard; except that the Secretary shall afford interested persons an opportunity for oral as well as written presentation of data, views, or arguments. A transcript shall be kept of any oral presentation.

(3) The chairman and ranking minority members of the House Interstate and Foreign Commerce Committee and the Senate Com-

merce Committee shall be notified in writing of any proposed standard to which this section applies. Any Member of Congress may make an oral presentation of data, views, or arguments under paragraph (2).

(4) Any standard promulgated pursuant to this subsection shall be transmitted to both Houses of Congress, on the same day and to each House while it is in session. In addition, such standard shall be transmitted to the chairmen and ranking minority members of the committees referred to in paragraph (3).

(d) Concurrent resolution of disapproval during prescribed period; Federal motor vehicle safety standard effective upon expiration of such period

(1) A standard which the Secretary has elected to promulgate in accordance with subsection (c) of this section shall not be effective if, during the first period of 60 calendar days of continuous session of Congress after the date of transmittal to Congress, both Houses of Congress pass a concurrent resolution the matter after the resolving clause of which reads as follows: "The Congress disapproves the Federal motor vehicle safety standard transmitted to Congress on ——, 19—."; (the blank space being filled with date of transmittal of the standard to Congress). If both Houses do not pass such a resolution during such period, such standard shall not be effective until the expiration of such period (unless the standard specifies a later date).

(2) For purposes of this section—

(A) continuity of session of Congress is broken only by an adjournment sine die; and

(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

(e) Judicial review of Federal motor vehicle safety standard

This section shall not impair any right which any person may have to obtain judicial review of a Federal motor vehicle safety standard.

(f) Definitions

For purposes of this section:

(1) The term "safety belt interlock" means any system designed to prevent starting or operation of a motor vehicle if one or more occupants of such vehicle are not using safety belts.

(2) The term "belt system" means an occupant restraint system consisting of integrated lap and shoulder belts for front outboard occupants and lap belts for other occupants. With respect to (A) motor vehicles other than passenger vehicles, (B) convertibles, and (C) open-body type vehicles, such term also includes an occupant restraint system consisting of lap belts or lap belts combined with detachable shoulder belts.

(3) The term "occupant restraint system" means a system the principal purpose of which is to assure that occupants of a motor vehicle remain in their seats in the event of a collision or rollover. Such term does not include a warning device designed to indicate that seat belts are not in use.

(4) The term "continuous buzzer" means a buzzer other than a buzzer which operates only during the 8 second period after the ignition is turned to the "start" or "on" position.

(Pub. L. 89-563, title I, § 125, as added Pub. L. 93-492, title I, § 109, Oct. 27, 1974, 88 Stat. 1482.)

CHANGE OF NAME

The name of the Commerce Committee of the Senate was changed to Committee on Commerce, Science, and Transportation by Senate Resolution 4, approved Feb. 4, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1397 of this title.

PART B—DISCOVERY, NOTIFICATION, AND REMEDY OF MOTOR VEHICLE DEFECTS

AMENDMENTS

1974—Pub. L. 93-492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1470 added heading "Part B—Discovery, Notification, and remedy of Motor Vehicle Defects".

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1397 of this title.

§ 1411. Notification respecting manufacturer's finding of defect or failure to comply

If a manufacturer—

(1) obtains knowledge that any motor vehicle or item of replacement equipment manufactured by him contains a defect and determines in good faith that such defect relates to motor vehicle safety; or

(2) determines in good faith that such vehicle or item of replacement equipment does not comply with an applicable Federal motor vehicle safety standard prescribed pursuant to section 1392 of this title;

he shall furnish notification to the Secretary and to owners, purchasers, and dealers, in accordance with section 1413 of this title, and he shall remedy the defect or failure to comply in accordance with section 1414 of this title.

(Pub. L. 89-563, title I, § 151, as added Pub. L. 93-492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1470.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

SAVINGS PROVISION

Section 102(c) of Pub. L. 93-492 provided that: "The amendments made by this section [enacting this part, amending section 1399(c) and repealing prior section 1402 of this title] shall not apply to any defect or failure to comply with respect to which, before the effective date of this title [see note under section 1409 of this title], notification was issued under section 113(a) of such Act [prior section 1402(a) of this title] or was required to be issued under section 113(e) [prior section 1402(e) of this title]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1399, 1413, 1414, 1416 of this title.

§ 1412. Notification respecting Secretary's finding of defect or failure to comply; publication in Federal Register; data, views, and arguments: presentation opportunity

(a) If through testing, inspection, investigation, or research carried out pursuant to this chapter, or examination of communications under section 1418(a)(1) of this title, or otherwise, the Secretary determines that any motor vehicle or item of replacement equipment—

(1) does not comply with an applicable Federal motor vehicle safety standard prescribed pursuant to section 1392 of this title; or

(2) contains a defect which relates to motor vehicle safety;

he shall immediately notify the manufacturer of such motor vehicle or item of replacement equipment of such determination, and shall publish notice of such determination in the Federal Register. The notification to the manufacturer shall include all information upon which the determination of the Secretary is based. Such notification (including such information) shall be available to any interested person, subject to section 1418(a)(2)(B) of this title. The Secretary shall afford such manufacturer an opportunity to present data, views, and arguments to establish that there is no defect or failure to comply or that the alleged defect does not affect motor vehicle safety; and shall afford other interested persons an opportunity to present data, views, and arguments respecting the determination of the Secretary.

(b) If, after such presentations by the manufacturer and interested persons, the Secretary determines that such vehicle or item of replacement equipment does not comply with an applicable Federal motor vehicle safety standard, or contains a defect which relates to motor vehicle safety, the Secretary shall order the manufacturer (1) to furnish notification respecting such vehicle or item of replacement equipment to owners, purchasers, and dealers in accordance with section 1413 of this title, and (2) to remedy such defect or failure to comply in accordance with section 1414 of this title.

(Pub. L. 89-563, title I, § 152, as added Pub. L. 93-492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1470.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1399, 1410a, 1413, 1414, 1415, 1416, 1418 of this title.

§ 1413. Notification respecting motor vehicle defect or failure to comply

(a) Contents of notification

The notification required by section 1411 or 1412 of this title respecting a defect in or failure to comply of a motor vehicle or item of replacement equipment shall contain, in addition to such other matters as the Secretary may prescribe by regulation—

(1) a clear description of such defect or failure to comply;

(2) an evaluation of the risk to motor vehicle safety reasonably related to such defect or failure to comply;

(3) a statement of the measures to be taken to obtain remedy of such defect or failure to comply;

(4) a statement that the manufacturer furnishing the notification will cause such defect or failure to comply to be remedied without charge pursuant to section 1414 of this title;

(5) the earliest date (specified in accordance with the second and third sentences of section 1414(b)(2) of this title) on which such defect or failure to comply will be remedied without charge and, in the case of tires, the period during which such defect or failure to comply will be remedied without charge pursuant to section 1414 of this title; and

(6) a description of the procedure to be followed by the recipient of the notification in informing the Secretary whenever a manufacturer, distributor, or dealer fails or is unable to remedy without charge such defect or failure to comply.

(b) Time for notification

The notification required by section 1411 or 1412 of this title shall be furnished—

(1) within a reasonable time after the manufacturer first makes a determination with respect to a defect or failure to comply under section 1411 of this title; or

(2) within a reasonable time (prescribed by the Secretary) after the manufacturer's receipt of notice of the Secretary's determination pursuant to section 1412 of this title that there is a defect or failure to comply.

(c) Method of notification

The notification required by section 1411 or 1412 of this title with respect to a motor vehicle or item of replacement equipment shall be accomplished—

(1) in the case of a motor vehicle, by first class mail to each person who is registered under State law as the owner of such vehicle and whose name and address is reasonably ascertainable by the manufacturer through State records or other sources available to him;

(2) in the case of a motor vehicle, or tire, by first class mail to the first purchaser (or if a more recent purchaser is known to the manufacturer, to the most recent purchaser known to the manufacturer) of each such vehicle or tire containing such defect or failure to comply, unless the registered owner (if any) of such vehicle was notified under paragraph (1);

(3) in the case of an item of replacement equipment (other than a tire), (A) by first class mail to the most recent purchaser known to the manufacturer; and (B) if the Secretary determines that it is necessary in the interest of motor vehicle safety, by public notice in such manner as the Secretary may order after consultation with the manufacturer;

(4) by certified mail or other more expeditious means to the dealer or dealers of such manufacturer to whom such motor vehicle or replacement equipment was delivered; and

(5) by certified mail to the Secretary, if section 1411 of this title applies.

In the case of a tire which contains a defect or failure to comply (or of a motor vehicle on which such tire was installed as original equipment), the manufacturer who is required to provide notification under paragraph (1) or (2) may elect to provide such notification by certified mail.

(Pub. L. 89-563, title I, § 153, as added Pub. L. 93-492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1471.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1411, 1412, 1414, 1415 of this title.

§ 1414. Remedy for defect or failure to comply

(a) Manner of remedying defect or failure to comply

(1) If notification is required under section 1411 of this title or by an order under section 1412(b) of this title, with respect to any motor vehicle or item of replacement equipment which fails to comply with an applicable Federal motor vehicle safety standard or contains a defect which relates to motor vehicle safety, then the manufacturer of each such motor vehicle or item of replacement equipment presented for remedy pursuant to such notification shall cause such defect or failure to comply in such motor vehicle or such item of replacement equipment to be remedied without charge. In the case of notification required by an order under section 1412(b) of this title, the preceding sentence shall not apply during any period during which enforcement of the order has been restrained in an action to which section 1415(a) of this title applies or if such order has been set aside in such an action.

(2)(A) In the case of a motor vehicle presented for remedy pursuant to such notification, the manufacturer (subject to subsection (b) of this section) shall cause the vehicle to be remedied by whichever of the following means he elects:

(i) By repairing such vehicle.

(ii) By replacing such motor vehicle without charge, with an identical or reasonably equivalent vehicle.

(iii) By refunding the purchase price of such motor vehicle in full, less a reasonable allowance for depreciation.

Replacement or refund may be subject to such conditions imposed by the manufacturer as the Secretary may permit by regulation.

(B) In the case of an item of replacement equipment the manufacturer shall (at his election) cause either the repair of such item of replacement equipment, or the replacement of such item of replacement equipment without charge with an identical or reasonably equivalent item of replacement equipment.

(3) The dealer who effects remedy pursuant to this section without charge shall receive fair and equitable reimbursement for such remedy from the manufacturer.

(4) The requirement of this section that remedy be provided without charge shall not apply if the motor vehicle or item of replacement equipment was purchased by the first purchaser more than 8 calendar years (3 calendar years in the case of a tire, including an original equipment tire) before (A) notification respecting the defect or failure to comply is furnished pursuant to section 1411 of this title, or (B) the Secretary orders such notification under section 1412 of this title, whichever is earlier.

(5)(A) The manufacturer of a tire (including an original equipment tire) presented for remedy by an owner or purchaser pursuant to notification under section 1413 of this title shall not be obligated to remedy such tire if such tire is not presented for remedy during the 60-day period beginning on the later of (i) the date on which the owner or purchaser received such notification or (ii) if the manufacturer elects replacement, the date on which the owner or purchaser received notice that a replacement tire is available.

(B) If the manufacturer elects replacement and if a replacement tire is not in fact available during the 60-day period, then the limitation under subparagraph (A) on the manufacturer's remedy obligation shall be applicable only if the manufacturer provides a notification (subsequent to the notification provided under subparagraph (A)(ii)) that replacement tires are to be available during a later 60-day period (beginning after such subsequent notification), and in that case the manufacturer's obligation shall be limited to tires presented for remedy during the later 60-day period if the tires are in fact available during that period.

(b) Failure to adequately repair defect or failure to comply

(1) Whenever a manufacturer has elected under subsection (a) of this section to cause the repair of a defect in a motor vehicle or item of replacement equipment or of a failure of such vehicle or item of replacement equipment to comply with a motor vehicle safety standard, and he has failed to cause such defect or failure to comply to be adequately repaired within a reasonable time, then (A) he shall cause the motor vehicle or item of replacement equipment to be replaced with an identical or reasonably equivalent vehicle or item of replacement equipment without charge, or (B) (in the case of a motor vehicle and if the manufacturer so elects) he shall cause the purchase price to be refunded in full, less a reasonable allowance for depreciation. Failure to adequately repair a motor vehicle or item of replacement equipment within 60 days after tender of the motor vehicle or item of replacement equipment for repair shall be prima facie evidence of failure to repair within a reasonable time; unless prior to the expiration of such 60-day period the Secretary, by order, extends such 60-day period for good cause shown and published in the Federal Register.

(2) For purposes of this subsection, the term "tender" does not include presenting a motor vehicle or item of replacement equipment for repair prior to the earliest date specified in the notification pursuant to section 1413(a) of this title on which such defect or failure to comply

will be remedied without charge, or (if notification was not afforded pursuant to section 1413(a) of this title) prior to the date specified in any notice required to be given under section 1415(d) of this title. In either case, such date shall be specified by the manufacturer and shall be the earliest date on which parts and facilities can reasonably be expected to be available. Such date shall be subject to disapproval by the Secretary.

(c) Filing of program for remedying defect or failure to comply with Secretary

The manufacturer shall file with the Secretary a copy of his program pursuant to this section for remedying any defect or failure to comply, and the Secretary shall make the program available to the public. Notice of such availability shall be published in the Federal Register.

(Pub. L. 89-563, title I, § 154, as added Pub. L. 93-492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1472.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1411, 1412, 1413, 1415, 1416 of this title.

§ 1415. Enforcement of notification and remedy orders

(a) Civil actions; venue; change of venue; consolidation; expedition of proceedings

(1) An action under section 1399(a) of this title to restrain a violation of an order issued under section 1412(b) of this title, or under section 1398 of this title to collect a civil penalty with respect to a violation of such an order, or any other civil action with respect to such an order, may be brought only in the United States district court for the District of Columbia or the United States district court for a judicial district in the State of incorporation (if any) of the manufacturer to which the order applies; unless on motion of any party the court orders a change of venue to any other district court for good cause shown. All actions (including enforcement actions) brought with respect to the same order under section 1412(b) of this title shall be consolidated in an action in a single judicial district, in accordance with an order of the court in which the first such action is brought (or if such first action is transferred to another court, by order of such other court).

(2) The court shall expedite the disposition of any civil action to which this subsection applies.

(b) Notification contents; liability of manufacturer

If a civil action which relates to an order under section 1412(b) of this title, and to which subsection (a) of this section applies, has been commenced the Secretary may order the manufacturer to issue a provisional notification which shall contain—

(A) a statement that the Secretary has determined that a defect which relates to motor vehicle safety, or failure to comply with a Federal motor vehicle safety standard, exists, and that the manufacturer is contesting such determination in a proceeding in a United States district court,

(B) a clear description of the Secretary's stated basis for his determination that there is such a defect or failure,

(C) the Secretary's evaluation of the risk to motor vehicle safety reasonably related to such defect or failure to comply,

(D) any measures which in the judgment of the Secretary are necessary to avoid an unreasonable hazard resulting from the defect or failure to comply,

(E) a statement that the manufacturer will cause such defect or failure to comply to be remedied without charge pursuant to section 1414 of this title, but that this obligation of the manufacturer is conditioned on the outcome of the court proceeding, and

(F) such other matters as the Secretary may prescribe by regulation or in such order.

Issuance of notification under this subsection does not relieve the manufacturer of any liability for failing to issue notification required by an order under section 1412(b) of this title.

(c) Civil actions for nonnotification of owners or purchasers; liability of manufacturer

(1) If a manufacturer fails to notify owners or purchasers in accordance with section 1413(c) of this title within the period specified under section 1413(b) of this title, the court may hold him liable for a civil penalty with respect to such failure to notify, unless the manufacturer prevails in an action described in subsection (a) of this section or unless the court in such an action restrains the enforcement of such order (in which case he shall not be liable with respect to any period for which the effectiveness of the order was stayed). The court shall restrain the enforcement of such an order only if it determines, (A) that the failure to furnish notification is reasonable, and (B) that the manufacturer has demonstrated that he is likely to prevail on the merits.

(2) If a manufacturer fails to notify owners or purchasers as required by an order under subsection (b) of this section, the court may hold him liable for a civil penalty without regard to whether or not he prevails in an action (to which subsection (a) of the section applies) with respect to the validity of the order issued under section 1412(b) of this title.

(d) Orders of Secretary against manufacturer; conditions for issuance

If (i) a manufacturer fails within the period specified in section 1413(b) of this title to comply with an order under section 1412(b) of this title to afford notification to owners and purchasers, (ii) a civil action to which subsection (a) of this section applies is commenced with respect to such order, and (iii) the Secretary prevails in such action, then the Secretary shall order the manufacturer—

(1) to afford notice (which notice may be combined with any notice required by an order under section 1412(b) of this title) to each owner, purchaser, and dealer described in section 1413(c) of this title of the outcome of the proceeding and containing such other information as the Secretary may require;

(2) to specify (in accordance with the second and third sentences of section 1414(b)[1] of this title) the earliest date on which such defect or failure will be remedied without charge; and

(3) if notification was required under subsection (b) of this section, to reimburse such owner or purchaser for any reasonable and necessary expenses (not in excess of any amount specified in the order of the Secretary) which are incurred (A) by such owner or purchaser; (B) for the purpose of repairing the defect or failure to comply to which the order relates; and (C) during the period beginning on the date such notification under subsection (b) of this section was required to be issued and ending on the date such owner or purchaser receives notification pursuant to this subsection.

(Pub. L. 89-563, title I, § 155, as added Pub. L. 93-492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1474.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1399, 1414 of this title.

§ 1416. Reasonableness of notification and remedy; hearing

Upon petition of any interested person or on his own motion, the Secretary may hold a hearing in which any interested person (including a manufacturer) may make oral (as well as written) presentations of data, views, and arguments on the question of whether a manufacturer has reasonably met his obligation to notify under section 1411 or 1412 of this title, and to remedy a defect or failure to comply under section 1414 of this title. If the Secretary determines the manufacturer has not reasonably met such obligation, he shall order the manufacturer to take specified action to comply with such obligation; and, in addition, the Secretary may take any other action authorized by this subchapter.

(Pub. L. 89-563, title I, § 156, as added Pub. L. 93-492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1475.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

§ 1417. Exemption for inconsequential defect or failure to comply; notice in Federal Register; data, views, and arguments: presentation opportunity

Upon application of a manufacturer, the Secretary shall exempt such manufacturer from any requirement under this part to give notice with respect to, or to remedy, a defect or failure to comply, if he determines, after notice in the Federal Register and opportunity for interested persons to present data, views, and arguments, that such defect or failure to comply is inconsequential as it relates to motor vehicle safety.

(Pub. L. 89-563, title I, § 157, as added Pub. L. 93-492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1475.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

§ 1418. Information, disclosure, and recordkeeping; confidential information

(a)(1) Every manufacturer shall furnish to the Secretary a true or representative copy of all notices, bulletins, and other communications to the dealers of such manufacturer or to owners or purchasers of motor vehicle or replacement equipment produced by such manufacturer regarding any defect or failure to comply in such vehicle or equipment which is sold or serviced.

(2)(A) Except as provided in subparagraph (B), the Secretary shall disclose to the public so much of any information which is obtained under this chapter and which relates to a defect which relates to motor vehicle safety or to a failure to comply with an applicable Federal motor vehicle safety standard, as he determines will assist in carrying out the purposes of this part or as may be required by section 1412 of this title.

(B) Any information described in subparagraph (A) which contains or relates to a trade secret or other matter referred to in section 1905 of title 18 shall be considered confidential for purposes of that section and shall not be disclosed; unless the Secretary determines that disclosure of such information is necessary to carry out the purposes of this subchapter.

(C) Any obligation to disclose information under this paragraph shall be in addition to and not in lieu of the requirements of section 552 of title 5.

(b) Every manufacturer of motor vehicles or tires shall cause the establishment and maintenance of records of the name and address of the first purchaser of each motor vehicle and tire produced by such manufacturer. To the extent required by regulations of the Secretary, every manufacturer of motor vehicles or tires shall cause the establishment and maintenance of records of the name and address of the first purchaser of each item of replacement equipment other than a tire produced by such manufacturer. The Secretary may, by rule, specify the records to be established and maintained, and reasonable procedures to be followed by manufacturers in establishing and maintaining such records, including procedures to be followed by distributors and dealers to assist manufacturers to secure the information required by this subsection; except that the availability or not of such assistance shall not affect the obligation of manufacturers under this subsection. Such procedures shall be reasonable for the particular type of motor vehicle or tires for which they are prescribed, and shall provide reasonable assurance that customer lists of any dealer and distributor, and similar information, will not be made available to any person other than the dealer or distributor, except where necessary to carry out the purpose of this part.

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[1] So in original. Probably should be "1414(b)(2)".

(Pub. L. 89-563, title I, § 158, as added Pub. L. 93-492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1475.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401, 1412 of this title.

§ 1419. Definitions

For purposes of this part:

(1) The retreader of tires shall be deemed the manufacturer of tires which have been retreaded, and the brand name owner of tires marketed under a brand name not owned by the manufacturer of the tire shall be deemed the manufacturer of tires marketed under such brand name.

(2) Except as otherwise provided in regulations of the Secretary:

(A) The term "original equipment" means an item of motor vehicle equipment (including a tire) which was installed in or on a motor vehicle at the time of its delivery to the first purchaser.

(B) The term "replacement equipment" means motor vehicle equipment (including a tire) other than original equipment.

(C) A defect in, or failure to comply of, an item of original equipment shall be deemed to be a defect in, or failure to comply of, the motor vehicle in or on which such equipment was installed at the time of its delivery to the first purchaser.

(D) If the manufacturer of a motor vehicle is not the manufacturer of original equipment installed in or on such vehicle at the time of its delivery to the first purchaser, the manufacturer of the vehicle (rather than the manufacturer of such equipment) shall be considered the manufacturer of such item of equipment.

(3) The term "first purchaser" means first purchaser for purposes other than resale.

(4) The term "adequate repair" does not include any repair which results in substantially impaired operation of a motor vehicle or item of replacement equipment.

(Pub. L. 89-563, title I, § 159, as added Pub. L. 93-492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1476.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

§ 1420. Effect on other laws

The provisions of this part shall not create or affect any warranty obligation under State or Federal law. Consumer remedies under this part are in addition to, and not in lieu of, any other right or remedy under State or Federal law.

(Pub. L. 89-563, title I, § 160, as added Pub. L. 93-492, title I, § 102(a), Oct. 27, 1974, 88 Stat. 1477.)

EFFECTIVE DATE

Section effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

SUBCHAPTER II—TIRE SAFETY

§ 1421. Labeling for pneumatic tires; required contents of label

In all standards for pneumatic tires established under subchapter I of this chapter, the Secretary shall require that tires subject thereto to be permanently and conspicuously labeled with such safety information as he determines to be necessary to carry out the purposes of this chapter. Such labeling shall include—

(1) suitable identification of the manufacturer, or in the case of a retreaded tire suitable identification of the retreader, unless the tire contains a brand name other than the name of the manufacturer in which case it shall also contain a code mark which would permit the seller of such tire to identify the manufacturer thereof to the purchaser upon his request.

(2) the composition of the material used in the ply of the tire.

(3) the actual number of plies in the tire.

(4) the maximum permissible load for the tire.

(5) a recital that the tire conforms to Federal minimum safe performance standards, except that in lieu of such recital the Secretary may prescribe an appropriate mark or symbol for use by those manufacturers or retreaders who comply with such standards.

The Secretary may require that additional safety related information be disclosed to the purchaser of a tire at the time of sale of the tire.

(Pub. L. 89-563, title II, § 201, Sept. 9, 1966, 80 Stat. 728.)

§ 1422. Standards for original equipment tires; maximum permissible load standards to be met

In standards established under subchapter I of this chapter the Secretary shall require that each motor vehicle be equipped by the manufacturer or by the purchaser thereof at the time of the first purchase thereof in good faith for purposes other than resale with tires which meet the maximum permissible load standards when such vehicle is fully loaded with the maximum number of passengers it is designed to carry and a reasonable amount of luggage.

(Pub. L. 89-563, title II, § 202, Sept. 9, 1966, 80 Stat. 729.)

§ 1423. Uniform quality grading system for motor vehicle tires; elimination of deceptive and confusing tire nomenclature

In order to assist the consumer to make an informed choice in the purchase of motor vehicle tires, within two years after September 9, 1966, the Secretary shall, through standards established under subchapter I of this chapter, prescribe by order, and publish in the Federal Register, a uniform quality grading system for motor vehicle tires. Such order shall specify the date such system is to take effect which shall not be sooner than one hundred and eighty days or later than one year from the date such order is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest, and publishes his reasons for such finding. The Secretary shall also cooperate with industry and the Federal Trade Commission to the maximum extent practicable in efforts to eliminate deceptive and confusing tire nomenclature and marketing practices.

(Pub. L. 89-563, title II, § 203, Sept. 9, 1966, 80 Stat. 729.)

§ 1424. Regrooved tires

(a) Restrictions

No person shall sell, offer for sale, or introduction[1] for sale, or deliver for introduction in interstate commerce, any tire or motor vehicle equipped with any tire which has been regrooved, except that the Secretary may by order permit the sale, offer for sale, introduction for sale, or delivery for introduction in interstate commerce, of regrooved tires and motor vehicles equipped with regrooved tires which he finds are designed and constructed in a manner consistent with the purposes of this chapter.

(b) Penalties

Violations of this section shall be subject to civil penalties and injunction in accordance with sections 1398 and 1399 of this title.

(c) Definition

For the purposes of this section the term "regrooved tire" means a tire on which a new tread has been produced by cutting into the tread of a worn tire.

(Pub. L. 89-563, title II, § 204, Sept. 9, 1966, 80 Stat. 729; Pub. L. 93-492, title I, § 110(c), Oct. 27, 1974, 88 Stat. 1484.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-492 substituted "introduction for sale, or" for "introduce for sale or" and "sale, offer for sale, introduction for sale, or delivery for introduction in interstate commerce, of regrooved tires" for "sale of regrooved tires".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-492 effective on sixtieth day after Oct. 27, 1974, see section 111 of Pub. L. 93-492, set out as a note under section 1409 of this title.

§ 1425. Conflicts with orders of Federal Trade Commission

In the event of any conflict between the requirements of orders or regulations issued by the Secretary under this subchapter and subchapter I of this chapter applicable to motor vehicle tires and orders or administrative interpretations issued by the Federal Trade Commission, the provisions of orders or regulations issued by the Secretary shall prevail.

(Pub. L. 89-563, title II, § 205, Sept. 9, 1966, 80 Stat. 729.)

§ 1426. Safety standards for retreaded tires

The Secretary shall, not later than one year after May 22, 1970, establish safety standards under subchapter I of this chapter setting limits on the age of tire carcasses which can be retreaded. Such standards shall establish varying age limits for such carcasses based on the extent to which the carcass was designed and constructed to be retreaded, the rate of deterioration of the materials in such tire, and such other factors as he determines necessary to carry out the purposes of this chapter.

(Pub. L. 89-563, title II, § 206, as added Pub. L. 91-265, § 6, May 22, 1970, 84 Stat. 263.)

SUBCHAPTER III—RESEARCH AND TEST FACILITIES

§ 1431. Facilities for research and testing in traffic safety

(a) The Secretary of Transportation is authorized to plan, design, and construct (including the alteration of existing facilities) facilities suitable to conduct research, development, and compliance and other testing in traffic safety (including highway safety and motor vehicle safety), except that no appropriation shall be made for any such planning, designing, or construction involving an expenditure in excess of $100,000 if such planning, designing, or construction has not been approved by resolutions adopted in substantially the same form by the Committees on Interstate and Foreign Commerce and on Public Works of the House of Representatives, and by the Committees on Commerce and on Public Works of the Senate. For the purpose of securing consideration of such approval the Secretary shall transmit to Congress a prospectus of the proposed facility including (but not limited to)—

(1) a brief description of the facility to be planned, designed, or constructed;

(2) the location of the facility, and an estimate of the maximum cost of the facility;

(3) a statement of those agencies, private and public, which will use such facility, together with the contribution to be made by each such agency toward the cost of such facility; and

(4) a statement of justification of the need for such facility.

(b) The estimated maximum cost of any facility approved under this section as set forth in the prospectus may be increased by the amount equal to the percentage increase, if any, as determined by the Secretary, in construction costs, from the date of the transmittal of such prospectus to Congress, but in no event shall the increase authorized by this subsection exceed 10 per centum of such estimated maximum cost.

(Pub. L. 89-563, title III, § 301, as added Pub. L. 91-265, § 7, May 22, 1970, 84 Stat. 263.)

CODIFICATION

A prior title III of Pub. L. 89-563, Sept. 9, 1966, 80 Stat. 729, consisting of sections 301 to 303, providing for investigation and study of the need for facilities to conduct research, development, and testing in traffic safety and report to Congress by December 31, 1967, was formerly set out as a note under section 1381 of this title and has been omitted as executed.

CHANGE OF NAME

The names of the Commerce Committee and Public Works Committee of the Senate were changed to

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[1] So in original. Probably should read "introduce".

Committee on Commerce, Science, and Transportation, and Committee on Environment and Public Works, respectively, by Senate Resolution 4, approved Feb. 4, 1977.

CHAPTER 39—FAIR PACKAGING AND LABELING PROGRAM

Sec.
1451. Congressional declaration of policy.
1452. Unfair and deceptive packaging and labeling; scope of prohibition.
1453. Requirements of labeling; placement, form, and contents of statement of quantity; supplemental statement of quantity.
1454. Rules and regulations.
  (a) Promulgating authority.
  (b) Exemption of commodities from regulations.
  (c) Scope of additional regulations.
  (d) Development by manufacturers, packers, and distributors of voluntary product standards.
  (e) Report and recommendations to Congress upon industry failure to develop or abide by voluntary product standards.
1455. Procedure for promulgation of regulations.
  (a) Hearings by Secretary of Health, Education, and Welfare.
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  (d) Returnable or reuseable glass containers for beverages.
1456. Enforcement.
  (a) Misbranded consumer commodities.
  (b) Unfair or deceptive acts or practices in commerce.
  (c) Imports.
1457. Annual reports to Congress; submission dates.
1458. Cooperation with state authorities; transmittal of regulations to states; noninterference with existing programs.
1459. Definitions.
1460. Savings provisions.
1461. Effect upon State law.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 21 sections 1033, 1049, 1052.

§ 1451. Congressional declaration of policy

Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons. Therefore, it is hereby declared to be the policy of the Congress to assist consumers and manufacturers in reaching these goals in the marketing of consumer goods.

(Pub. L. 89-755, § 2, Nov. 3, 1966, 80 Stat. 1296.)

EFFECTIVE DATE

Section 13 of Pub. L. 89-755 provided that: "This Act [enacting this chapter] shall take effect on July 1, 1967: *Provided*, That the Secretary (with respect to any consumer commodity which is a food, drug, device, or cosmetic, as those terms are defined by the Federal Food, Drug, and Cosmetic Act) [section 301 et seq. of Title 21, Food and Drugs], and the Commission (with respect to any other consumer commodity) may by regulation postpone, for an additional twelve-month period, the effective date of this Act [this chapter] with respect to any class or type of consumer commodity on the basis of a finding that such a postponement would be in the public interest."

SHORT TITLE

Section 1 of Pub. L. 89-755 provided: "That this Act [enacting this chapter] may be cited as the 'Fair Packaging and Labeling Act'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1454 of this title.

§ 1452. Unfair and deceptive packaging and labeling; scope of prohibition

(a) It shall be unlawful for any person engaged in the packaging or labeling of any consumer commodity (as defined in this chapter) for distribution in commerce, or for any person (other than a common carrier for hire, a contract carrier for hire, or a freight forwarder for hire) engaged in the distribution in commerce of any packaged or labeled consumer commodity, to distribute or to cause to be distributed in commerce any such commodity if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this chapter and of regulations promulgated under the authority of this chapter.

(b) The prohibition contained in subsection (a) of this section shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons (1) are engaged in the packaging or labeling of such commodities, or (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

(Pub. L. 89-755, § 3, Nov. 3, 1966, 80 Stat. 1296.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1453, 1456 of this title.

§ 1453. Requirements of labeling; placement, form, and contents of statement of quantity; supplemental statement of quantity

(a) No person subject to the prohibition contained in section 1452 of this title shall distribute or cause to be distributed in commerce any packaged consumer commodity unless in conformity with regulations which shall be established by the promulgating authority pursuant to section 1455 of this title which shall provide that—

(1) The commodity shall bear a label specifying the identity of the commodity and the name and place of business of the manufacturer, packer, or distributor;

(2) The net quantity of contents (in terms of weight, measure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display panel of that label;

(3) The separate label statement of net quantity of contents appearing upon or affixed to any package—

(A)(i) if on a package containing less than four pounds or one gallon and labeled in terms of weight or fluid measure, shall, unless subparagraph (ii) applies and such statement is set forth in accordance with such subparagraph, be expressed both in ounces (with identification as to avoirdupois or fluid ounces) and, if applicable, in pounds for weight units, with any remainder in terms of ounces or common or decimal fractions of the pound; or in the case of liquid measure, in the largest whole unit (quarts, quarts and pints, or pints, as appropriate) with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart;

(ii) if on a random package, may be expressed in terms of pounds and decimal fractions of the pound carried out to not more than two decimal places;

(iii) if on a package labeled in terms of linear measure, shall be expressed both in terms of inches and the largest whole unit (yards, yards and feet, or feet, as appropriate) with any remainder in terms of inches or common or decimal fractions of the foot or yard;

(iv) if on a package labeled in terms of measure of area, shall be expressed both in terms of square inches and the largest whole square unit (square yards, square yards and square feet, or square feet, as appropriate) with any remainder in terms of square inches or common or decimal fractions of the square foot or square yard;

(B) shall appear in conspicuous and easily legible type in distinct contrast (by topography, layout, color, embossing, or molding) with other matter on the package;

(C) shall contain letters or numerals in a type size which shall be (i) established in relationship to the area of the principal display panel of the package, and (ii) uniform for all packages of substantially the same size; and

(D) shall be so placed that the lines of printed matter included in that statement are generally parallel to the base on which the package rests as it is designed to be displayed; and

(4) The label of any package of a consumer commodity which bears a representation as to the number of servings of such commodity contained in such package shall bear a statement of the net quantity (in terms of weight, measure, or numerical count) of each such serving.

(5) For purposes of paragraph (3)(A)(ii) of this subsection the term "random package" means a package which is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights, that is, packages with no fixed weight pattern.

(b) No person subject to the prohibition contained in section 1452 of this title shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a) of this section, but nothing in this subsection or in paragraph (2) of subsection (a) of this section shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents: *Provided*, That such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

(Pub. L. 89-755, § 4, Nov. 3, 1966, 80 Stat. 1297.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1454, 1455, 1456, 1461 of this title.

§ 1454. Rules and regulations

(a) Promulgating authority

The authority to promulgate regulations under this chapter is vested in (A) the Secretary of Health, Education, and Welfare (referred to hereinafter as the "Secretary") with respect to any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 321 of title 21; and (B) the Federal Trade Commission (referred to hereinafter as the "Commission") with respect to any other consumer commodity.

(b) Exemption of commodities from regulations

If the promulgating authority specified in this section finds that, because of the nature, form, or quantity of a particular consumer commodity, or for other good and sufficient reasons, full compliance with all the requirements otherwise applicable under section 1453 of this title is impracticable or is not necessary for the adequate protection of consumers, the Secretary or the Commission (whichever the case may be) shall promulgate regulations exempting such commodity from those requirements to the extent and under such conditions as the promulgating authority determines to be consistent with section 1451 of this title.

(c) Scope of additional regulations

Whenever the promulgating authority determines that regulations containing prohibitions or requirements other than those prescribed by section 1453 of this title are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, such authority shall promulgate with respect to that commodity regulations effective to—

(1) establish and define standards for characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages which may be used to enclose any commodity;

(2) regulate the placement upon any package containing any commodity, or upon any label affixed to such commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents;

(3) require that the label on each package of a consumer commodity (other than one which is a food within the meaning of section

321(f) of title 21) bear (A) the common or usual name of such consumer commodity, if any, and (B) in case such consumer commodity consists of two or more ingredients, the common or usual name of each such ingredient listed in order of decreasing predominance, but nothing in this paragraph shall be deemed to require that any trade secret be divulged; or

(4) prevent the nonfunctional-slack-fill of packages containing consumer commodities.

For purposes of paragraph (4) of this subsection, a package shall be deemed to be nonfunctionally slack-filled if it is filled to substantially less than its capacity for reasons other than (A) protection of the contents of such package or (B) the requirements of machines used for enclosing the contents in such package.

(d) Development by manufacturers, packers, and distributors of voluntary product standards

Whenever the Secretary of Commerce determines that there is undue proliferation of the weights, measures, or qualities in which any consumer commodity or reasonably comparable consumer commodities are being distributed in packages for sale at retail and such undue proliferation impairs the reasonable ability of consumers to make value comparisons with respect to such consumer commodity or commodities, he shall request manufacturers, packers, and distributors of the commodity or commodities to participate in the development of a voluntary product standard for such commodity or commodities under the procedures for the development of voluntary products standards established by the Secretary pursuant to section 272 of this title. Such procedures shall provide adequate manufacturer, packer, distributor, and consumer representation.

(e) Report and recommendations to Congress upon industry failure to develop or abide by voluntary product standards

If (1) after one year after the date on which the Secretary of Commerce first makes the request of manufacturers, packers, and distributors to participate in the development of a voluntary product standard as provided in subsection (d) of this section, he determines that such a standard will not be published pursuant to the provisions of such subsection (d), or (2) if such a standard is published and the Secretary of Commerce determines that it has not been observed, he shall promptly report such determination to the Congress with a statement of the efforts that have been made under the voluntary standards program and his recommendation as to whether Congress should enact legislation providing regulatory authority to deal with the situation in question.

(Pub. L. 89-755, § 5, Nov. 3, 1966, 80 Stat. 1298.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1455, 1456, 1457 of this title.

§ 1455. Procedure for promulgation of regulations

(a) Hearings by Secretary of Health, Education, and Welfare

Regulations promulgated by the Secretary under section 1453 or 1454 of this title shall be promulgated, and shall be subject to judicial review, pursuant to the provisions of subsections (e), (f), and (g) of section 371 of title 21. Hearings authorized or required for the promulgation of any such regulations by the Secretary shall be conducted by the Secretary or by such officer or employees of the Department of Health, Education, and Welfare as he may designate for that purpose.

(b) Judicial review; hearings by Federal Trade Commission

Regulations promulgated by the Commission under section 1453 or 1454 of this title shall be promulgated, and shall be subject to judicial review, by proceedings taken in conformity with the provisions of subsections (e), (f), and (g) of section 371 of title 21 in the same manner, and with the same effect, as if such proceedings were taken by the Secretary pursuant to subsection (a) of this section. Hearings authorized or required for the promulgation of any such regulations by the Commission shall be conducted by the Commission or by such officer or employee of the Commission as the Commission may designate for that purpose.

(c) Cooperation with other departments and agencies

In carrying into effect the provisions of this chapter, the Secretary and the Commission are authorized to cooperate with any department or agency of the United States, with any State, Commonwealth, or possession of the United States, and with any department, agency, or political subdivision of any such State, Commonwealth, or possession.

(d) Returnable or reusable glass containers for beverages

No regulation adopted under this chapter shall preclude the continued use of returnable or reusable glass containers for beverages in inventory or with the trade as of the effective date of this Act, nor shall any regulation under this chapter preclude the orderly disposal of packages in inventory or with the trade as of the effective date of such regulation.

(Pub. L. 89-755, § 6, Nov. 3, 1966, 80 Stat. 1299.)

REFERENCES IN TEXT

The effective date of this Act, referred to in subsec. (d), refers to the effective date of Pub. L. 89-755 which enacted this chapter to take effect on July 1, 1967. See Effective Date note under section 1451 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1453 of this title.

§ 1456. Enforcement

(a) Misbranded consumer commodities

Any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 321 of title 21, and which is introduced or delivered for introduction into commerce in violation of any of the provisions of this chapter, or the regulations issued pursuant to this chapter, shall be deemed to be misbranded within the meaning of sections 331 to 337 of title 21, but the provisions of section 333 of title 21 shall have no application to any violation of section 1452 of this title.

(b) Unfair or deceptive acts or practices in commerce

Any violation of any of the provisions of this chapter, or the regulations issued pursuant to this chapter, with respect to any consumer commodity which is not a food, drug, device, or cosmetic, shall constitute an unfair or deceptive act or practice in commerce in violation of section 45(a) of this title and shall be subject to enforcement under section 45(b) of this title.

(c) Imports

In the case of any imports into the United States of any consumer commodity covered by this chapter, the provisions of sections 1453 and 1454 of this title shall be enforced by the Secretary of the Treasury pursuant to section 381(a) and (b) of this title.

(Pub. L. 89-755, § 7, Nov. 3, 1966, 80 Stat. 1300.)

§ 1457. Annual reports to Congress; submission dates

Each officer or agency required or authorized by this chapter to promulgate regulations for the packaging or labeling of any consumer commodity, or to participate in the development of voluntary product standards with respect to any consumer commodity under procedures referred to in section 1454(d) of this title, shall transmit to the Congress each year a report containing a full and complete description of the activities of that officer or agency for the administration and enforcement of this chapter during the preceding fiscal year. All agencies except the Federal Trade Commission shall submit their report in January of each year. The Federal Trade Commission shall include this report in the Commission's annual report to Congress.

(Pub. L. 89-755, § 8, Nov. 3, 1966, 80 Stat. 1300; Pub. L. 93-608, § 3(2), Jan. 2, 1975, 88 Stat. 1972.)

AMENDMENTS

1975—Pub. L. 93-608 added provision relating to submission of required report by the Federal Trade Commission with the annual report of the Commission to the Congress.

§ 1458. Cooperation with state authorities; transmittal of regulations to states; noninterference with existing programs

(a) A copy of each regulation promulgated under this chapter shall be transmitted promptly to the Secretary of Commerce, who shall (1) transmit copies thereof to all appropriate State officers and agencies, and (2) furnish to such State officers and agencies information and assistance to promote to the greatest practicable extent uniformity in State and Federal regulation of the labeling of consumer commodities.

(b) Nothing contained in this section shall be construed to impair or otherwise interfere with any program carried into effect by the Secretary of Health, Education, and Welfare under other provisions of law in cooperation with State governments or agencies, instrumentalities, or political subdivisions thereof.

(Pub. L. 89-755, § 9, Nov. 3, 1966, 80 Stat. 1301.)

§ 1459. Definitions

For the purpose of this chapter—

(a) The term "consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic (as those terms are defined by the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]), and any other article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. Such term does not include—

(1) any meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(2) Any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 [21 U.S.C. 151 et seq.], commonly known as the Virus-Serum-Toxin Act;

(3) any drug subject to the provisions of section 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 353(b)(1) and 356];

(4) any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act [27 U.S.C. 201 et seq.]; or

(5) any commodity subject to the provisions of the Federal Seed Act [7 U.S.C. 1551 et seq.].

(b) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include—

(1) shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof;

(2) shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; or

(3) containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231-233), or the Act of March 4, 1915 (38 Stat. 1186, as amended; 15 U.S.C. 234-236).

(c) The term "label" means any written, printed, or graphic matter affixed to any consumer commodity or affixed to or appearing upon a package containing any consumer commodity.

(d) The term "person" includes any firm, corporation, or association.

(e) The term "commerce" means (1) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, and any place outside thereof, and (2) commerce within the District of Columbia or within any territory or possession of the United States not organized with a legislative body, but shall not include exports to foreign countries.

(f) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(Pub. L. 89-755, § 10, Nov. 3, 1966, 80 Stat. 1301; Pub. L. 90-628, § 2, Oct. 22, 1968, 82 Stat. 1320.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to subsec. (a), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables volume.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (a)(2), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§ 136 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables volume.

The eighth paragraph under the heading "Bureau of Animal Industry" of the Virus-Serum-Toxin Act, referred to in subsec. (a)(2), is classified to chapter 5 (§ 151 et seq.) of Title 21, Food and Drugs.

The Federal Alcohol Administration Act, referred to in subsec. (a)(4), is act Aug. 29, 1935, ch. 814, 49 Stat. 977, which is classified generally to chapter 8 (§ 201 et seq.) of Title 27, Intoxicating Liquors. For complete classification of this Act to the Code, see section 201 of Title 27 and Tables volume.

The Federal Seed Act, referred to in subsec. (a)(5), is act Aug. 9, 1939, ch. 615, 53 Stat. 1275, which is classified generally to chapter 37 (§ 1551 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1551 of Title 7 and Tables volume.

AMENDMENTS

1968—Subsec. (b)(3). Pub. L. 90-628 struck out reference to the Act of August 31, 1916, and the Act of May 21, 1928.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-628 effective 60 days after Oct. 22, 1968, see section 3 of Pub. L. 90-628, set out as a note under section 251 of this title.

§ 1460. Savings provisions

Nothing contained in this chapter shall be construed to repeal, invalidate, or supersede—

(a) the Federal Trade Commission Act [15 U.S.C. 41 et seq.] or any statute defined therein as an antitrust Act;

(b) the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]; or

(c) the Federal Hazardous Substances Labeling Act [15 U.S.C. 1261 et seq.].

(Pub. L. 89-755, § 11, Nov. 3, 1966, 80 Stat. 1302.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

The Federal Food, Drug, and Cosmetic Act, referred to in text, is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables volume.

The Federal Hazardous Substances Labeling Act, referred to in text, is Pub. L. 86-613, July 12, 1960, 74 Stat. 372, which is classified generally to chapter 30 (§ 1261 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables volume.

§ 1461. Effect upon State law

It is hereby declared that it is the express intent of Congress to supersede any and all laws of the States or political subdivisions thereof insofar as they may now or hereafter provide for the labeling of the net quantity of contents of the package of any consumer commodity covered by this chapter which are less stringent than or require information different from the requirements of section 1453 of this title or regulations promulgated pursuant thereto.

(Pub. L. 89-755, § 12, Nov. 3, 1966, 80 Stat. 1302.)

CHAPTER 39A—SPECIAL PACKAGING OF HOUSEHOLD SUBSTANCES FOR PROTECTION OF CHILDREN

Sec.
1471. Definitions.
1472. Special packaging standards.
  (a) Establishment.
  (b) Considerations.
  (c) Publication of findings, reasons, and citation of statutory authorizations.
  (d) Limitation.
1473. Conventional packages, marketing.
  (a) Noncomplying packages for elderly or handicapped persons; labeling statements.
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  (c) Exclusive use of special packaging; necessary circumstances.
1474. Regulations for special packaging standards.
  (a) Rule making procedure; election and application of procedure under section 371 of title 21; publication of election and proposal.
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1475. Technical advisory committee.
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1476. Preemption of Federal standards.
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  (c) Exemption for State standards; requirements; determination of burden on interstate commerce; notice and hearing.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2079 of this title; title 7 section 136w.

§ 1471. Definitions

For the purpose of this Act—

(1) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(2) The term "household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is—

(A) a hazardous substance as that term is defined in section 1261(f) of this title;

(B) a food, drug, or cosmetic as those terms are defined in section 321 of title 21; or

(C) a substance intended for use as fuel when stored in a portable container and used in the heating, cooking, or refrigeration system of a house.

(3) The term "package" means the immediate container or wrapping in which any household substance is contained for consumption, use, or storage by individuals in or about the household, and, for purposes of section 1473(a)(2) of this title, also means any outer container or wrapping used in the retail display of any such substance to consumers. Such term does not include—

(A) any shipping container or wrapping used solely for the transportation of any household substance in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof, or

(B) any shipping container or outer wrapping used by retailers to ship or deliver any household substance to consumers unless it is the only such container or wrapping.

(4) The term "special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

(5) The term "labeling" means all labels and other written, printed, or graphic matter (A) upon any household substance or its package, or (B) accompanying such substance.

(Pub. L. 91-601, § 2, Dec. 30, 1970, 84 Stat. 1670; Pub. L. 92-516, § 3(2), Oct. 21, 1972, 86 Stat. 998; Pub. L. 94-284, § 3(a), May 11, 1976, 90 Stat. 503.)

References in Text

"This Act", referred to in the text, means Pub. L. 91-601 which enacted this chapter, section 136(z)(2)(i) of Title 7, Agriculture, and sections 343(n), 352(p), and 362(f) of Title 21, Food and Drugs, amended section 1261(p) of this title and section 353(b)(2) of Title 21, and enacted provisions set out as a note under this section.

Amendments

1976—Par. (2). Pub. L. 94-284 deleted subpar. (B), which included pesticide as defined in section 136(u) of Title 7 within the meaning of "household substance", and redesignated as subpars. (B) and (C) former subpars. (C) and (D), respectively.

1972—Par. (2)(B). Pub. L. 92-516 substituted "a pesticide" for "an economic poison".

Effective Date of 1972 Amendment

For effective date of amendment by Pub. L. 92-516, see section 4 of Pub. L. 92-516, set out as a note under section 136 of Title 7, Agriculture.

Effective Date

Section 9 of Pub. L. 91-601 provided that: "This Act [see Short Title note hereunder] shall take effect on the date of its enactment [Dec. 30, 1970]. Each regulation establishing a special packaging standard shall specify the date such standard is to take effect which date shall not be sooner than one hundred and eighty days or later than one year from the date such regulation is final, unless the Secretary, for good cause found, determines that an earlier effective date is in the public interest and publishes in the Federal Register his reason for such finding, in which case such earlier date shall apply. No such standard shall be effective as to household substances subject to this Act packaged prior to the effective date of such final regulation."

Short Title

Section 1 of Pub. L. 91-601 provided that: "This Act [which enacted this chapter, section 136(z)(2)(i) of Title 7, Agriculture, and sections 343(n), 352(p), and 362(f) of Title 21, Food and Drugs, amended section 1261(p) of this title and section 353(b)(2) of Title 21, and enacted provisions set out as a note under this section] may be cited as the 'Poison Prevention Packaging Act of 1970'."

Transfer of Functions

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

Section Referred to in Other Sections

This section is referred to in section 1261 of this title.

§ 1472. Special packaging standards

(a) Establishment

The Secretary, after consultation with the technical advisory committee provided for in section 1475 of this title, may establish in accordance with the provisions of this Act, by regulation, standards for the special packaging of any household substance if he finds that—

(1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance; and

(2) the special packaging to be required by such standard is technically feasible, practicable, and appropriate for such substance.

(b) Considerations

In establishing a standard under this section, the Secretary shall consider—

(1) the reasonableness of such standard;

(2) available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

(3) the manufacturing practices of industries affected by this Act; and

(4) the nature and use of the household substance.

(c) Publication of findings, reasons, and citation of statutory authorizations

In carrying out this Act, the Secretary shall publish his findings, his reasons therefor, and citation of the sections of statutes which authorize his action.

(d) Limitation

Nothing in this Act shall authorize the Secretary to prescribe specific packaging designs, product content, package quantity, or, with the exception of authority granted in section 1473(a)(2) of this title, labeling. In this case of a household substance for which special packaging is required pursuant to a regulation under this section, the Secretary may in such regulation prohibit the packaging of such substance in packages which he determines are unnecessarily attractive to children.

(Pub. L. 91-601, § 3, Dec. 30, 1970, 84 Stat. 1670.)

REFERENCES IN TEXT

For classification in the Code of "this Act", referred to in text, see Short Title note set out under section 1471 of this title.

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1261, 1474, 1476, 2076 of this title; title 21 sections 343, 352, 362.

§ 1473. Conventional packages, marketing

(a) Noncomplying packages for elderly or handicapped persons; labeling statements

For the purpose of making any household substance which is subject to a standard established under section 1472 of this title readily available to elderly or handicapped persons unable to use such substance when packaged in compliance with such standard, the manufacturer or packer, as the case may be, may package any household substance, subject to such a standard, in packaging of a single size which does not comply with such standard if—

(1) the manufacturer (or packer) also supplies such substance in packages which comply with such standard; and

(2) the packages of such substance which do not meet such standard bear conspicuous labeling stating: "This package for households without young children"; except that the Secretary may by regulation prescribe a substitute statement to the same effect for packaging too small to accommodate such labeling.

(b) Noncomplying packages for substances dispensed pursuant to orders of medical practitioners

In the case of a household substance which is subject to such a standard and which is dispensed pursuant to an order of physician, dentist, or other licensed medical practitioner authorized to prescribe, such substance may be dispensed in noncomplying packages only when directed in such order or when requested by the purchaser.

(c) Exclusive use of special packaging; necessary circumstances

In the case of a household substance subject to such a standard which is packaged under subsection (a) of this section in a noncomplying package, if the Secretary determines that such substance is not also being supplied by a manufacturer (or packer) in popular size packages which comply with such standard, he may, after giving the manufacturer (or packer) an opportunity to comply with the purposes of this Act, by order require such substance to be packaged by such manufacturer (or packer) exclusively in special packaging complying with such standard if he finds, after opportunity for hearing, that such exclusive use of special packaging is necessary to accomplish the purposes of this Act.

(Pub. L. 91-601, § 4, Dec. 30, 1970, 84 Stat. 1671.)

REFERENCES IN TEXT

For classification in the Code of "this Act", referred to in subsec. (c), see Short Title note set out under section 1471 of this title.

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1261, 1471, 1472 of this title; title 21 sections 343, 352, 362.

§ 1474. Regulations for special packaging standards

(a) Rule making procedure; election and application of procedure under section 371 of title 21; publication of election and proposal

Proceedings to issue, amend, or repeal a regulation prescribing a standard under section 1472 of this title shall be conducted in accordance with the procedures prescribed by section 553 (other than paragraph (3)(B) of the last sentence of subsection (b) of such section) of title 5 unless the Secretary elects the procedures prescribed by subsection (e) of section 371 of title 21, in which event such subsection and subsections (f) and (g) of such section 371 shall apply to such proceedings. If the Secretary makes such election, he shall publish that fact with the proposal required to be published under paragraph (1) of such subsection (e).

(b) Judicial review; petition; record; additional evidence; jurisdiction of court of appeals; scope of review; relief pending review; finality of judgment; review by Supreme Court

(1) In the case of any standard prescribed by a regulation issued in accordance with section 553 of title 5, any person who will be adversely affected by such a standard may, at any time prior to the 60th day after the regulation prescribing such standard is issued by the Secretary, file a petition with the United States Court of Appeals for the circuit in which such person resides or has his principal place of business for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose. The Secretary shall file in the court the record of the proceedings on which the Sec-

retary based his standard, as provided in section 2112 of title 28.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there was no opportunity to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original standard, with the return of such additional evidence.

(3) Upon the filing of the petition under paragraph (1) of this subsection the court shall have jurisdiction to review the standard of the Secretary in accordance with subparagraphs (A), (B), (C), and (D) of paragraph (2) of section 706 of title 5. If the court ordered additional evidence to be taken under paragraph (2) of this subsection, the court shall also review the Secretary's standard to determine if, on the basis of the entire record before the court pursuant to paragraphs (1) and (2) of this subsection, it is supported by substantial evidence. If the court finds the standard is not so supported, the court may set it aside.

(4) With respect to any standard reviewed under this subsection, the court may grant appropriate relief pending conclusion of the review proceedings, as provided in section 705 of such title 5.

(5) The judgment of the court affirming or setting aside, in whole or in part, any such standard of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(Pub. L. 91-601, § 5, Dec. 30, 1970, 84 Stat. 1671.)

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

§ 1475. Technical advisory committee

(a) Appointment; designation of chairman; representation of interests; consultation of Secretary with committee

For the purpose of assisting in carrying out the purposes of this Act, the Secretary shall appoint a technical advisory committee, designating a member thereof to be chairman, composed of not more than eighteen members who are representative of (1) the Department of Health, Education, and Welfare, (2) the Department of Commerce, (3) manufacturers of household substances subject to this Act, (4) scientists with expertise related to this Act and licensed practitioners in the medical field, (5) consumers, and (6) manufacturers of packages and closures for household substances. The Secretary shall consult with the technical advisory committee in making findings and in establishing standards pursuant to this Act.

(b) Compensation and travel expenses

Members of the technical advisory committee who are not regular full-time employees of the United States shall, while attending meetings of such committee, be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding $100 per diem, including traveltime, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(Pub. L. 91-601, § 6, Dec. 30, 1970, 84 Stat. 1672.)

REFERENCES IN TEXT

For classification in the Code of "this Act", referred to in subsec. (a), see Short Title note set out under section 1471 of this title.

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law, see section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1472 of this title.

§ 1476. Preemption of Federal standards

(a) Exception for identical State standards

Except as provided in subsections (b) and (c) of this section, whenever a standard established by the Secretary under this Act applicable to a household substance is in effect, no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the standard established under section 1472 of this title (and any exemption therefrom and requirement related thereto) of this Act.

(b) Federal or State standards which afford a higher degree of protection

The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect, with respect to a household substance for its own use, a standard for special packaging or related requirement which is designed to protect against a risk of illness or injury with respect to which a standard for special packaging or related requirement is in effect under this Act and which is not identical to such standard or requirement if the Federal, State, or political subdivision standard or requirement provides a higher degree of protection from such risk of illness or injury than the standard or requirement in effect under this Act.

(c) Exemption for State standards; requirements; determination of burden on interstate commerce; notice and hearing

(1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a) of this section, under such conditions as may be prescribed in such regulation, any standard for special packaging or related requirement of such State or political subdivision applicable to a household substance subject to a standard or requirement in effect under this Act if—

(A) compliance with the State or political subdivision standard or requirement would not cause the household substance to be in violation of the standard or requirement in effect under this Act, and

(B) the State or political subdivision standard or requirement (i) provides a significantly higher degree of protection from the risk of illness or injury with respect to which the Federal standard or requirement is in effect, and (ii) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision standard or requirement on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such standard or requirement, the cost of complying with such standard or requirement, the geographic distribution of the household substance to which the standard or requirement would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or requirement, and the need for a national, uniform standard or requirement under this Act for such household substance.

(2) A regulation under paragraph (1) granting an exemption for a standard or requirement of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5 notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

(Pub. L. 91-601, § 8, Dec. 30, 1970, 84 Stat. 1673; Pub. L. 94-284, § 17(c), May 11, 1976, 90 Stat. 513.)

REFERENCES IN TEXT

For classification in the Code of "this Act", referred to in the text, see Short Title note set out under section 1471 of this title.

AMENDMENTS

1976—Pub. L. 94-284 substituted "(a) Except as provided in subsections (b) and (c) of this section, whenever" for "Whenever" in the existing provision, and added subsecs. (b) and (c).

TRANSFER OF FUNCTIONS

Functions of the Secretary of Health, Education, and Welfare under this chapter transferred to the Consumer Product Safety Commission, see section 2079 of this title.

CHAPTER 40—DEPARTMENT OF COMMERCE

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§ 1501. Establishment of Department; Secretary; seal

There shall be at the seat of government an executive department to be known as the Department of Commerce, and a Secretary of Commerce, who shall be the head thereof, who shall be appointed by the President, by and with the advice and consent of the Senate, and whose term and tenure of office shall be like that of the heads of the other executive departments; and the provisions of title four of the Revised Statutes, including all amendments thereto, of this title shall be applicable to said department. The said Secretary shall cause a seal of office to be made for the said department of such device as the President shall approve, and judicial notice shall be taken of the said seal.

(Feb. 14, 1903, ch. 552, § 1, 32 Stat. 825; Feb. 26, 1907, ch. 1635, § 4, 34 Stat. 993; Feb. 17, 1909, ch. 137, §§ 1, 2, 35 Stat. 626; Mar. 4, 1909, ch. 297, § 1, 35 Stat. 861; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Mar. 3, 1917, ch. 163, § 1, 39 Stat. 1111; Mar. 4, 1925, ch. 549, § 4, 43 Stat. 1301.)

References in Text

The provisions of title four of the Revised Statutes, referred to in text, consisted of section 158 et seq. thereof and was entitled "Provisions Applicable to all the Executive Departments." For distribution of such sections in the Code, see Tables Volume.

Codification

Section was formerly classified to section 591 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

Transfer of Functions

A Department of Labor, under charge of a Commissioner of Labor, was established by act June 13, 1888, ch. 380, 25 Stat. 182, and by section 9 of that act, the Bureau of Labor created under act June 27, 1884, ch. 127, 23 Stat. 60, was to cease on the organization of the Department. The Department of Commerce and Labor, as an Executive Department, with a Secretary of Commerce and Labor as the head thereof, was established by act Feb. 14, 1903, ch. 552, 32 Stat. 825, and by section 4 of that act, the Department of Labor was placed under the jurisdiction and made a part of the Department of Commerce and Labor with various other offices, bureaus, and branches of the public service also transferred to and placed under the jurisdiction of the Department so established. In subsequent appropriation and other acts, the Department of Labor was designated as the Bureau of Labor in that Department. But by act March 4, 1913, ch. 141, 37 Stat. 736, a new executive department was created, to be called "The Department of Labor," with a Secretary of Labor to be the head thereof, and the Department of Commerce and Labor was thereafter to be called the Department of Commerce, and the Secretary thereof to be called the Secretary of Commerce.

The functions of all other officers of the Department of Commerce and the functions of all agencies and employees of such Department were, with a few exceptions, transferred to the Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any such officers, agencies, and employees by Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out below.

REORGANIZATION PLAN NO. 5 OF 1950

Eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, as amended June 5, 1952, ch. 369, ch. XI, § 1101, 66 Stat. 121; July 2, 1954, ch. 456, title III, § 304, 68 Stat. 430

Department of Commerce

§ 1. Transfer of Functions to the Secretary

(a) Except as otherwise provided in subsection (b) of this section, there are hereby transferred to the Secretary of Commerce all functions of all other officers of the Department of Commerce and all functions of all agencies and employees of such Department.

(b) This section shall not apply to the functions vested by the Administrative Procedure Act (60 Stat. 273) [now sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees], in hearing examiners employed by the Department of Commerce, nor to the functions of the Civil Aeronautics Board, of the Inland Waterways Corporation, or of the Advisory Board of the Inland Waterways Corporation.

§ 2. Performance of Functions of Secretary

The Secretary of Commerce may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of Commerce of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan.

§ 3. [Repealed. July 2, 1954, ch. 456, Title III, § 304, 68 Stat. 430]

Section, as amended by act June 5, 1952, ch. 369, ch. XI, § 1101, 66 Stat. 121, provided for the appointment of an Administrative Assistant Secretary of Commerce.

§ 4. Incidental Transfers

The Secretary of Commerce may from time to time effect such transfers within the Department of Commerce of any of the records, property, personnel, and unexpended balances (available or to be made available) of appropriations, allocations, and other funds of such Department as he may deem necessary in order to carry out the provisions of this reorganization plan.

Federal Maritime Board, and Maritime Functions of Secretary of Commerce

Section 307 of Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, Government Organization and Employees, provided that the functions transferred by the provisions of that Plan should not be subject to the provisions of Reorg. Plan No. 5 of 1950, set out above. Said Reorg. Plan No. 21 of 1950 created, within the Department of Commerce, the Federal Maritime Board, and the Maritime Administration, the latter, with a Maritime Administrator at its head. It abolished the United States Maritime Commission, transferring some of its functions and some of the functions of its Chairman to said Federal Maritime Board. It transferred the remainder of the functions of that Commission and its Chairman to the Secretary of Commerce, with power vested in him to authorize their performance by said Maritime Administrator.

Order of Succession

For order of succession in case of absence, disability or vacancy in office of both the Secretary and Under Secretary, see Ex. Ord. No. 11880, Oct. 2, 1975, 40 F.R. 46089, set out as a note under section 3347 of Title 5, Government Organization and Employees.

Cross References

Compensation of Secretary of Commerce, see section 5312 of Title 5, Government Organization and Employees.

§ 1502. Under Secretary; appointment

There is established in the Department of Commerce the position of Under Secretary of Commerce with appointment thereto by the President, by and with the advice and consent of the Senate.

(June 5, 1939, ch. 180, § 1, 53 Stat. 808.)

Codification

Provisions of section that fixed the compensation of the Under Secretary have been omitted as obsolete. The position is now under the Executive Schedule, see section 5314 of Title 5, Government Organization and Employees.

Section was formerly classified to section 591a of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title.

UNDER SECRETARY FOR TRANSPORTATION

The additional office of "Under Secretary of Commerce for Transportation", in the Department of Commerce, was provided for by section 301 of Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, Government Organization and Employees, to be appointed by the President, by and with the advice and consent of the Senate, to receive compensation at the rate prescribed by law for Under Secretaries of Executive departments, and to perform such duties as the Secretary of Commerce shall prescribe.

ORDER OF SUCCESSION

For order of succession in case of absence, disability, or vacancy in office of the Secretary of Commerce, see Ex. Ord. No. 11880, Oct. 2, 1975, 40 F.R. 46089, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 1503. Performance by Under Secretary of Secretary's duties upon latter's absence, death, etc.

Such Under Secretary shall perform the duties of the Secretary of Commerce in the case of absence or sickness of the Secretary, or in the case of the death or resignation of the Secretary until a successor is appointed.

(June 5, 1939, ch. 180, § 2, 53 Stat. 808.)

CODIFICATION

Section was formerly classified to section 591b of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title.

ORDER OF SUCCESSION

For order of succession in case of absence, disability, or vacancy in office of the Secretary of Commerce, see Ex. Ord. No. 11880, Oct. 2, 1975, 40 F.R. 46089, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 1504. Assistant Secretary

There shall be in said department an Assistant Secretary of Commerce, to be appointed by the President. He shall perform such duties as shall be prescribed by the Secretary or required by law.

(Feb. 14, 1903, ch. 552, § 2, 32 Stat. 826; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Mar. 3, 1917, ch. 163, § 1, 39 Stat. 1111.)

CODIFICATION

Section was formerly classified to section 592 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title.

ORDER OF SUCCESSION

For order of succession in case of absence, disability, or vacancy in office of the Secretary of Commerce, see Ex. Ord. No. 11880, Oct. 2, 1975, 40 F.R. 46089, set out as a note under section 3347 of Title 5, Government Organization and Employees.

CROSS REFERENCES

Compensation of Assistant Secretaries, see section 5315 of Title 5, Government Organization and Employees.

Duties and rank of Assistant Secretaries, see section 1505 of this title.

§ 1505. Additional Assistant Secretary; duties, rank of Assistant Secretaries

There shall be in the Department of Commerce one additional Assistant Secretary of Commerce, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary of Commerce may assign to his Assistant Secretaries such duties, including the direction of the Bureau of Foreign and Domestic Commerce, as he shall prescribe, or may be required by law. The Assistant Secretaries of Commerce shall be without numerical distinction of rank.

(July 15, 1947, ch. 251, 61 Stat. 326.)

CODIFICATION

Provisions of last sentence that fixed the compensation of the Assistant Secretaries of Commerce have been omitted as obsolete. The positions are now under the Executive Schedule. See section 5315 of Title 5, Government Organization and Employees.

Section was formerly classified to section 592a of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

Pursuant to the powers transferred to the Secretary of Commerce under Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title, the Secretary has reassigned the functions of the Bureau of Foreign and Domestic Commerce to other officers of the Department.

PRIOR PROVISIONS

Prior provisions for an additional Assistant Secretary of Commerce were contained in act May 20, 1926, ch. 344, § 8, 44 Stat. 573, as amended June 23, 1938, ch. 601, § 1107(k), 52 Stat. 1029. Said position was terminated by section 592a-1 of former Title 5, Executive Departments and Government Officers and Employees.

ORDER OF SUCCESSION

For order of succession in case of absence, disability, or vacancy in office of the Secretary of Commerce, see Ex. Ord. No. 11880, Oct. 2, 1975, 40 F.R. 46089, set out as a note under section 3347 of Title 5, Government Organization and Employees.

CROSS REFERENCES

Compensation of Assistant Secretaries, see section 5315 of Title 5, Government Organization and Employees.

Appointment of additional Assistant Secretary of Commerce, and applicability of this section, see section 1506 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1506 of this title.

§ 1506. Additional Assistant Secretary; appointment; applicability of section 1505

There shall be on and after July 2, 1954 in the Department of Commerce, in addition to the Assistant Secretaries now provided for by law, one additional Assistant Secretary of Commerce, who shall be appointed by the President by and with the advice and consent of the Senate, and who shall be subject in all respects to the provisions of section 1505 of this title, relating to Assistant Secretaries of Commerce.

(July 2, 1954, ch. 456, title III, § 304, 68 Stat. 430.)

CODIFICATION

Section constitutes the first sentence of section 304 of act July 2, 1954. The second sentence of such section 304 repealed section 3 of Reorg. Plan 5 of 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title, which established the position of Administrative Assistant Secretary of Commerce.

Section was formerly classified to section 592a–3 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

CROSS REFERENCES

Compensation of Assistant Secretaries, see section 5315 of Title 5, Government Organization and Employees.

§ 1507. Additional Assistant Secretary; appointment; compensation; duties

There shall be in the Department of Commerce, in addition to the Assistant Secretaries now provided by law, one additional Assistant Secretary of Commerce who shall be appointed by the President by and with the advice and consent of the Senate, shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce, and shall perform such duties as the Secretary of Commerce shall prescribe.

(Pub. L. 87–405, Feb. 16, 1962, 76 Stat. 9.)

CODIFICATION

Section was formerly classified to section 592a–4 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

CROSS REFERENCES

Compensation of Assistant Secretaries, see section 5315 of Title 5, Government Organization and Employees.

§ 1507a. Assistant Secretary for Maritime Affairs; appointment; compensation; duties

There shall be in the Department of Commerce, in addition to the Assistant Secretaries now provided by law, one additional Assistant Secretary of Commerce who shall be known as the Assistant Secretary of Commerce for Maritime Affairs, shall be appointed by the President by and with the advice and consent of the Senate, shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce, and shall perform such duties as the Secretary of Commerce shall prescribe.

(Pub. L. 91–469, § 42(a), Oct. 21, 1970, 84 Stat. 1038.)

§ 1508. General Counsel

There shall be in the Department of Commerce a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate.

(Mar. 18, 1904, ch. 716, § 1, 33 Stat. 135; July 17, 1952, ch. 932, § 2, 66 Stat. 758; Aug. 20, 1954, ch. 776, 68 Stat. 753.)

CODIFICATION

Provisions of section that fixed the compensation of the General Counsel have been omitted as obsolete. The position is now under the Executive Schedule. See section 5315 of Title 5, Government Organization and Employees.

Section was formerly classified to section 592b of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

1954—Act Aug. 20, 1954, established the rate of compensation.

1952—Act July 17, 1952, redesignated the Solicitor to be General Counsel and provided that "all laws and orders relating or referring to the Solicitor shall be deemed to relate or refer to the General Counsel".

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title.

ORDER OF SUCCESSION

For order of succession in case of absence, disability, or vacancy in office of the Secretary of Commerce by the General Counsel, see Ex. Ord. No. 11880, Oct. 2, 1975, 40 F.R. 46089, set out as a note under section 3347 of Title 5, Government Organization and Employees.

§ 1509. Designation of officer to sign routine papers

The Secretary may designate an officer of the Department to sign minor routine official papers and documents during the temporary absence of the Secretary, the Under Secretary, and the Assistant Secretaries of the Department.

(May 21, 1945, ch. 129, title III, 59 Stat. 188; July 15, 1947, ch. 251, 61 Stat. 326.)

CODIFICATION

Assistant Secretary changed to Assistant Secretaries by act July 15, 1947, which provided for an additional Assistant Secretary. See section 1505 of this title.

Section was formerly classified to section 593a of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title.

§ 1510. Clerical assistants

There shall also be such clerical assistants as may from time to time be authorized by the Congress.

(Feb. 14, 1903, ch. 552, § 2, 32 Stat. 826; July 16, 1952, ch. 878, § 2, 66 Stat. 710.)

CODIFICATION

Section was formerly classified to section 594 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

1952—Act July 16, 1952, provided for clerical assistants instead of a disbursing clerk.

DISBURSEMENT CLERK

Section, act Feb. 14, 1903, c. 552, § 2, 32 Stat. 826, provided for a disbursing clerk in the Department of Commerce.

TRANSFER OF DISBURSEMENT AGENCIES

Division of Disbursement and certain other offices and agencies and their functions were consolidated into Fiscal Service of Treasury Department by Reorg. Plan No. III of 1940, § 1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1511. Bureaus in Department

The following named bureaus, administrations, services, offices, and programs of the public service, and all that pertains thereto, shall be under the jurisdiction and subject to the control of the Secretary of Commerce:

(a) National Oceanic and Atmospheric Administration;

(b) United States Travel Service;

(c) Maritime Administration;

(d) National Bureau of Standards;

(e) Patent and Trademark Office;

(f) Bureau of the Census;

(g) National Fire Prevention and Control Administration; and

(h) such other bureaus or other organizational units as the Secretary of Commerce may from time to time establish in accordance with law.

(Feb. 14, 1903, ch. 552, §§ 4, 12, 32 Stat. 826, 830; Aug. 23, 1912, ch. 350, § 1, 37 Stat. 407; Mar. 4, 1913, ch. 141, § 3, 37 Stat. 737; Jan. 5, 1923, ch. 23, § 1, 42 Stat. 1109; June 30, 1932, ch. 314, § 501, 47 Stat. 415; Feb. 22, 1934, Ex. Ord. 6611; May 27, 1936, ch. 463, § 1, 49 Stat. 1380; 1939 Reorg. Plan No. II, §§ 2(a), 4(e), 6, eff. July 1, 1936, 4 F.R. 2731, 53 Stat. 1432; 1940 Reorg. Plan No. IV, §§ 7, 8, eff. June 30, 1940, 5 F.R. 2422, 54 Stat. 1235, 1236; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; June 30, 1949, ch. 288, title I, § 103(a), 63 Stat. 380; Aug. 4, 1949, ch. 393, § 20, 63 Stat. 561; 1949 Reorg. Plan No. 7, § 1, eff. Aug. 19, 1949, 14 F.R. 5228, 63 Stat. 1070; 1950 Reorg. Plan No. 21, §§ 101, 106, 201, 15 F.R. 3178, 64 Stat. 1273; Oct. 29, 1974, Pub. L. 93-498, § 23, 88 Stat. 1549; Jan. 2, 1975, Pub. L. 93-596, § 3, 88 Stat. 1949.)

CODIFICATION

Section was formerly classified to section 597 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

1974—Pub. L. 93-498 substituted reference to Secretary of Commerce for Department of Commerce, substituted letters for numbers in the designation for enumerated bodies, and in such enumeration substituted reference to National Oceanic and Atmospheric Administration, United States Travel Service, Maritime Administration, National Bureau of Standards, Patent Office, Bureau of the Census, National Fire Prevention and Control Administration and such other bureaus or other organizational units as the Secretary of Commerce may from time to time establish in accordance with law, for reference to The Bureau of Foreign and Domestic Commerce, The Bureau of Public Roads, The Civil Aeronautics Authority, The Census Office, The Coast and Geodetic Survey, The Federal Maritime Board, The Inland Waterways Corporation, The Maritime Administration, The National Bureau of Standards, The Patent Office, and The Weather Bureau.

1949—Act Aug. 4, 1949, repealed from credit act June 17, 1910, ch. 301, § 4, 36 Stat. 537, which related to former Bureau of Lighthouses.

CHANGE OF NAME

"Patent and Trademark Office" substituted for "Patent Office", in accordance with section 3 of Pub. L. 93-596, set out as a note under section 1 of Title 35, Patents.

In order to implement the provisions of Reorganization Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, as amended, set out below, the following organizational names appearing in chapter IX of subtitle B of Title 15, Code of Federal Regulations, which covers the administration of the National Oceanic and Atmospheric Administration, were changed by order of the Acting Associate Administrator, 35 F.R. 19249, Dec. 19, 1970, as follows: Environmental Science Services Administration to National Oceanic and Atmospheric Administration (ESSA to NOAA); Coast and Geodetic Survey to National Ocean Survey; and Weather Bureau to National Weather Service.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Aug. 4, 1949, effective as of the first day of the third month after the month of approval, August 1949, see note set out preceding chapter 1 of Title 14, Coast Guard.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title.

The Public Roads Administration, which was redesignated the Bureau of Public Roads and, with its functions, transferred from the Federal Works Agency to the General Services Administration by section 103(a) of act June 30, 1949 (set out as section 753 of Title 40, Public Buildings, Property, and Works), was subsequently transferred to the Department of Commerce by Reorg. Plan No. 7 of 1949, which is set out in the Appendix to Title 5, Government Organization and Employees. See section 1651 et seq. of Title 49, Transportation.

The Federal Maritime Board was created as an agency within the Department of Commerce by Reorg. Plan No. 21 of 1950, §§ 101, 106, set out in the Appendix to Title 5, and sections 103 to 105 of the Plan transferred to the Board and its chairman some of the functions of the former United States Maritime Commission and the chairman thereof. Section 307 of the Plan provided that the functions transferred to the Federal Maritime Board and its chairman should not be subject to the provisions of Reorg. Plan No. 5 of 1950, also eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in note under section 1501 of this title, which, with a few additional exceptions, transferred the functions of all officers, agencies, and employees of the Department of Commerce to the Secretary of Commerce, and authorized him to delegate any of the functions so transferred, or any of his other functions, to any of such officers, agencies and employees. Section 304 of Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, abolished the Federal Maritime Board, including the offices of the members of the Board. Functions of the Board were transferred either to the Federal Maritime Commission, which was established as an independent body, or to the Secretary of Commerce by sections 103 and 202 of Reorg. Plan No. 7 of 1961.

The Maritime Administration, with a Maritime Administrator at its head, was established in the Department of Commerce by Reorg. Plan No. 21 of 1950, § 201, set out in the Appendix to Title 5, and section 204 of the Plan transferred some of the functions of the former United States Maritime Commission and its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Administrator. Section 307 of the Plan provided that the functions transferred to the Secretary by that Plan should not be subject to the provisions of Reorg. Plan No. 5 of 1950, also eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in note under section 1501 of this title, which, with a few additional exceptions, transferred the functions of all other officers, agencies, and employees of the Department of Commerce to the Secretary of Commerce, and authorized him to delegate any of the functions so transferred, or any of his other functions, to any of such officers, agencies and employees.

Section 304 of Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, abolished the Federal Maritime Board, including the offices of the members of the Board. Functions of the Board were transferred either to the Federal Maritime Commission, which was established as an independent body, or to the Secretary of Commerce by sections 103 and 202 of Reorg. Plan No. 7 of 1961.

The Community Relations Service was transferred from the Department of Commerce to the Department of Justice by Reorg. Plan No. 1 of 1966, eff. Apr. 22, 1966, 31 F.R. 6187, 80 Stat. 1607, set out in the Appendix to Title 5.

The Department of Commerce, prior to act Mar. 4, 1913, was known as the Department of Commerce and Labor. The following agencies which were placed under the jurisdiction of the Department of Commerce and Labor by act Feb. 13, 1903, which act established the Department, were abolished or transferred as follows:

The office of United States Shipping Commissioner was abolished by Reorg. Plan No. 3 of 1946, §§ 101 to 104, eff. July 16, 1946, which transferred the functions to the Commandant of the Coast Guard and the Commissioner of Customs. See Appendix to Title 5, Government Organization and Employees.

The Bureau of Navigation and the Steamboat Inspection Service were consolidated into the Bureau of Navigation and Steamboat Inspection by act June 30, 1932, which name was changed to Bureau of Marine Inspection and Navigation by act May 27, 1936, cited to text. Said Bureau was abolished and its functions transferred to the Commandant of the Coast Guard and the Commissioner of Customs by Reorg. Plan No. 3 of 1946. See Appendix to Title 5.

The Bureau of Fisheries was transferred to the Department of the Interior by section 4(e) of Reorg. Plan No. II of 1939. Reorg. Plan No. II of 1939 is set out in the Appendix to Title 5.

The name of the Bureau of Immigration was changed to Bureau of Immigration and Naturalization by act June 29, 1906, ch. 3592, § 1, 34 Stat. 596. The Commissioner General of Immigration, the Commissioners of Immigration, and the Bureau of Immigration and Naturalization, were transferred to the Department of Labor by act March 4, 1913. Subsequently, by Ex. Ord. No. 6166, § 14 of June 10, 1933, and Reorg. Plan No. V of 1940, eff. June 14, 1940, 5 F.R. 2223, 54 Stat. 1238, the Bureau of Immigration and the Bureau of Naturalization were consolidated to form the Immigration and Naturalization Service and transferred to the Department of Justice.

The Light-House Board and the Light-House Establishment were consolidated under the Bureau of Lighthouses by Act June 17, 1910, ch. 301, § 4, 36 Stat. 537. The Bureau of Lighthouses was transferred to the Coast Guard in the Department of the Treasury by Reorg. Plan No. II of 1939, § 2(a). Reorg. Plan No. II of 1939 is set out in the Appendix to Title 5.

The Bureau of Mines, transferred from the Department of the Interior to the Department of Commerce by Ex. Ord. No. 4239, eff. July 1, 1925, was retransferred to the Department of the Interior by Ex. Ord. No. 6611, Feb. 24, 1934.

The following agencies, now under the jurisdiction of the Department of Commerce, acquired their status in the manner indicated:

The Bureau of Foreign and Domestic Commerce resulted from a consolidation of the Bureau of Manufactures and the Bureau of Statistics by act Aug. 23, 1912.

The Civil Aeronautics Authority was transferred to the Department of Commerce by section 7 of Reorg. Plan No. IV of 1940. Reorg. Plan No. IV of 1940 is set out in the Appendix to Title 5. For transfer of functions of both Civil Aeronautics Board and Federal Aeronautics Authority, see section 1651 et seq. of Title 49, Transportation.

The Inland Waterways Corporation was transferred to the Department of Commerce by section 6 of Reorg. Plan No. II of 1939. Reorg. Plan No. II of 1939 is set out in the Appendix of Title 5.

The Patent Office was transferred from the Department of the Interior by Ex. Ord. of Mar. 17, 1925, as authorized by section 12 of act Feb. 14, 1903. See section 1517 of this title.

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

The Weather Bureau was transferred from the Department of Agriculture by section 8 of Reorg. Plan No. IV of 1940. Reorg. Plan IV of 1940 is set out in the Appendix to Title 5. The Coast and Geodetic Survey and the Weather Bureau were consolidated to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 4443, set out in the Appendix to title 5.

REORGANIZATION PLAN NO. 4 OF 1970

Eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, as amended Pub. L. 94-461, § 4(c)(1), Oct. 8, 1976, 90 Stat. 1969

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, July 9, 1970, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SECTION 1. TRANSFERS TO SECRETARY OF COMMERCE

The following are hereby transferred to the Secretary of Commerce:

(a) All functions vested by law in the Bureau of Commercial Fisheries of the Department of the Interior or in its head, together with all functions vested by law in the Secretary of the Interior or the Department of the Interior which are administered through that Bureau or are primarily related to the Bureau, exclusive of functions with respect to (1) Great Lakes fishery research and activities related to the Great Lakes Fisheries Commission, (2) Missouri River Reservoir research, (3) the Gulf Breeze Biological Laboratory of the said Bureau at Gulf Breeze, Florida, and (4) Trans-Alaska pipeline investigations.

(b) The functions vested in the Secretary of the Interior by the Act of September 22, 1959 (Public Law 86-359, 73 Stat. 642, 16 U.S.C. 760c-760g; relating to migratory marine species of game fish).

(c) The functions vested by law in the Secretary of the Interior, or in the Department of the Interior or in any officer or instrumentality of that Department, which are administered through the Marine Minerals Technology Center of the Bureau of Mines.

(d) All functions vested in the National Science Foundation by the National Sea Grant College and Program Act of 1966 (80 Stat. 998), as amended (33 U.S.C. 1121 et seq.).

(e) Those functions vested in the Secretary of Defense or in any officer, employee, or organizational entity of the Department of Defense by the provision of Public Law 91-144, 83 Stat. 326, under the heading "Operation and maintenance, general" with respect to "surveys and charting of northern and northwestern lakes and connecting waters," or by other law, which come under the mission assigned as of July 1, 1969, to the United States Army Engineer District, Lake Survey, Corps of Engineers, Department of the Army and relate to (1) the conduct of hydrographic surveys of the Great Lakes and their outflow rivers, Lake Champlain, New York State Barge Canals, and the Minnesota-Ontario border lakes, and the compilation and publication of navigation charts, including recreational aspects, and the Great Lakes Pilot for the benefit and use of the public, (2) the conception, planning, and conduct of basic research and development in the fields of water motion, water characteristics, water quantity, and ice and snow, and (3) the publication of data and the results of research projects in forms useful to the Corps of Engineers and the public, and the operation of a Regional Data Center for the collection, coordination, analysis, and the furnishing to interested agencies of data relating to water resources of the Great Lakes.

(f) So much of the functions of the transferor officers and agencies referred to in or affected by the foregoing provisions of this section as is incidental to or necessary for the performance by or under the Secretary of Commerce of the functions transferred by those provisions or relates primarily to those functions. The transfers to the Secretary of Commerce made by this section shall be deemed to include the transfer of authority, provided by law, to prescribe regulations relating primarily to the transferred functions.

SEC. 2. ESTABLISHMENT OF ADMINISTRATION

(a) There is hereby established in the Department of Commerce an agency which shall be known as the National Oceanic and Atmospheric Administration, hereinafter referred to as the "Administration."

(b) There shall be at the head of the Administration the Administrator of the National Oceanic and Atmospheric Administration, hereinafter referred to as the "Administrator." The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314).

(c) There shall be in the Administration a Deputy Administrator of the National Oceanic and Atmospheric Administration who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315). The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) There shall be in the Administration an Associate Administrator of the National Oceanic and Atmospheric Administration who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315). The Associate Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator and Deputy Administrator. The office of Associate Administrator may be filed at the discretion of the President by appointment (by and with the advice and consent of the Senate) from the active list of commissioned officers of the Administration in which case the appointment shall create a vacancy on the active list and while holding the office of Associate Administrator the officer shall have rank, pay, and allowances not exceeding those of a vice admiral.

(e) There shall be in the Administration three additional officers who shall perform such functions as the Administrator shall from time to time assign or delegate. Each such officer shall be appointed by the Secretary, subject to the approval of the President, under the classified civil service, shall have such title as the Secretary shall from time to time determine, and shall receive compensation at the rate now or hereafter provided for Level V of the Executive Schedule Pay Rates (5 U.S.C. 5316).

(f) The President may appoint in the Administration, by and with the advice and consent of the Senate, two commissioned officers to serve at any one time as the designated heads of two principal constituent organizational entities of the Administration, or the President may designate one such officer as the head of such an organizational entity and the other as the head of the commissioned corps of the Administration. Any such designation shall create a vacancy on the active list and the officer while serving under this subsection shall have the rank, pay, and allowances of a rear admiral (upper half).

(g) Any commissioned officer of the Administration who has served under (d) or (f) and is retired while so serving or is retired after the completion of such service while serving in a lower rank or grade, shall be retired with the rank, pay, and allowances authorized by law for the highest grade and rank held by him; but any such officer, upon termination of his appointment in a rank above that of captain, shall, unless appointed or assigned to some other position for which a higher rank or grade is provided, revert to the grade and number he would have occupied had he not served in a rank above that of captain and such officer shall be an extra number in that grade.

SEC. 3. PERFORMANCE OF TRANSFERRED FUNCTIONS

The provisions of sections 2 and 4 of Reorganization Plan No. 5 of 1950 (64 Stat. 1263) shall be applicable to the functions transferred hereunder to the Secretary of Commerce.

SEC. 4. INCIDENTAL TRANSFERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Secretary of Commerce by this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the Department of Commerce at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of the Office of Management and Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

(c) The personnel, property, records, and unexpended balances of appropriations, allocations, and other funds of the Environmental Science Services Administration shall become personnel, property, records, and unexpended balances of the National Oceanic and Atmospheric Administration or of such other organizational entity or entities of the Department of Commerce as the Secretary of Commerce shall determine.

(d) The Commissioned Officer Corps of the Environmental Science Services Administration shall become the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration. Members of the Corps, including those appointed hereafter, shall be entitled to all rights, privileges, and benefits heretofore available under any law to commissioned officers of the Environmental Science Services Administration, including those rights, privileges, and benefits heretofore accorded by law to commissioned officers of the former Coast and Geodetic Survey.

(e) Any personnel, property, records, and unexpended balances of appropriations, allocations, and other funds of the Bureau of Commercial Fisheries not otherwise transferred shall become personnel, property, records, and unexpended balances of such organizational entity or entities of the Department of the Interior as the Secretary of the Interior shall determine.

SEC. 5. INTERIM OFFICERS

(a) The President may authorize any person who immediately prior to the effective date of this reorganization plan held a position in the executive branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator and authorize any such person to act as Associate Administrator.

(c) The President may similarly authorize a member of the former Commissioned Officer Corps of the Environmental Science Services Administration to act as the head of one principal constituent organizational entity of the Administration.

(d) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect of which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

SEC. 6. ABOLITIONS

(a) Subject to the provisions of this reorganization plan, the following, exclusive of any functions, are hereby abolished:

(1) The Environmental Science Services Administration in the Department of Commerce (established by Reorganization Plan No. 2 of 1965, 79 Stat. 1318), including the offices of Administrator of the Environmental Science Services Administration and Deputy Administrator of the Environmental Science Services Administration.

(2) The Bureau of Commercial Fisheries in the Department of the Interior (16 U.S.C. 742b), including the office of Director of the Bureau of Commercial Fisheries.

(b) Such provisions as may be necessary with respect to terminating any outstanding affairs shall be made by the Secretary of Commerce in the case of the Environmental Science Services Administration and by the Secretary of the Interior in the case of the Bureau of Commercial Fisheries.

MESSAGE OF THE PRESIDENT[1]

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 4 of 1970, prepared in accordance with chapter 9 of title 5 of the United States Code. The plan would transfer to the Secretary of Commerce various functions relating to the oceans and atmosphere, including commercial fishery functions, and would establish a National Oceanic and Atmospheric Administration in the Department of Commerce. My reasons for transmitting this plan are stated in a more extended accompanying message.

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 4 of 1970 is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. In particular, the plan is responsive to section 901(a)(1), "to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;" and section 901(a)(3), "to increase the efficiency of the operations of the Government to the fullest extent practicable."

The reorganizations provided for in the plan make necessary the appointment and compensation of new officers as specified in section 2 of the plan. The rates of compensation fixed for these officers are comparable to those fixed for other officers in the executive branch who have similar responsibilities.

The reorganization plan should result in the more efficient operation of the Government. It is not practical, however, to itemize or aggregate the exact expenditure reductions which will result from this action.

RICHARD NIXON.

THE WHITE HOUSE,
July 9, 1970.

EXECUTIVE ORDER NO. 11567

Ex. Ord. No. 11567, Nov. 16, 1970, 35 F.R. 17701, formerly set out as a note under this section, which prescribed the compensation of the Director and Deputy Director of the Bureau of Domestic Commerce, was superseded by Ex. Ord. No. 11759, Jan. 15, 1974, 39 F.R. 2077, set out as a note under this section.

EX. ORD. NO. 11759. COMPENSATION OF CERTAIN OFFICIALS IN DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION

Ex. Ord. No. 11759, Jan. 15, 1974, 39 F.R. 2077, provided:

By virtue of the authority vested in me by section 703(a) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2153(a)), and as President of the United States, it is ordered as follows:

SECTION 1. The compensation for the position of Deputy Assistant Secretary for Domestic and International Business, Department of Commerce, is hereby fixed at the rate now or hereafter prescribed by law for level V of the Executive Schedule (5 U.S.C. 5316).

SEC. 2. The compensation for the position of Deputy Assistant Secretary for Domestic Commerce, Department of Commerce, is hereby fixed at the highest rate now or hereafter prescribed by law for grade 18 of the General Schedule (5 U.S.C. 5332).

SEC. 3. Executive Order No. 11567 of November 16, 1970, is hereby superseded.

RICHARD NIXON.

CROSS REFERENCE

United States Travel Service, establishment in Department of Commerce, see section 2124 of Title 22, Foreign Relations and Intercourse.

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[1] For additional Message of the President see Reorganization Plan No. 3 of 1970, Title 5, Government Officers and Employees, Appendix.

§ 1511a. Associate Administrator for Coastal Zone Management

There shall be in the National Oceanic and Atmospheric Administration an Associate Administrator for Coastal Zone Management, who shall be appointed by the President, by and with the advice and consent of the Senate. Such Associate Administrator shall be an individual who is, by reason of background and experience, especially qualified to direct the implementation and administration of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.). Such Associate Administrator shall be compensated at the rate now or hereafter provided for level V of the Executive Schedule Pay Rates (5 U.S.C. 5316).

(Pub. L. 94-370, § 15(a), July 26, 1976, 90 Stat. 1032.)

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972, referred to in text, is title III of Pub. L. 89-454 as added by Pub. L. 92-583, Oct. 27, 1972, 86 Stat. 1280, which is classified to chapter 33 (§ 1451 et seq.) of Title 16, Conservation.

ESTABLISHMENT OF POSITIONS AND FIXING OF COMPENSATION BY SECRETARY OF COMMERCE; APPOINTMENTS

Section 15(c) of Pub. L. 94-370 provided that: "The Secretary may, to carry out the provisions of the amendments made by this Act [see Short Title of 1976 Amendment note under section 1451 of title 16], establish, and fix the compensation for, four new positions without regard to the provision of chapter 51 of title 5, United States Code at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title. Any such appointment may, at the discretion of the Secretary, be made without regard to the provisions of such title 5 governing appointments in the competitive service."

§ 1512. Powers and duties of Department

It shall be the province and duty of said Department to foster, promote, and develop the foreign and domestic commerce, the mining, manufacturing, shipping, and fishery industries, and the transportation facilities of the United States; and to this end it shall be vested with jurisdiction and control of the departments, bureaus, offices, and branches of the public service hereinafter specified, and with such other powers and duties as may be prescribed by law.

(Feb. 14, 1903, ch. 552, § 3, 32 Stat. 826.)

CODIFICATION

Section was formerly classified to section 596 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Secretary of Commerce, see Parts 1, 9, and 30 of Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, set out as a note under section 2292 of Title 50, Appendix, War and National Defense.

CROSS REFERENCES

Clearing house for technical, scientific, and engineering information, see sections 1151 to 1157 of this title.

§ 1513. Duties and powers vested in Department

All duties performed and all power and authority possessed or exercised by the head of any executive department in and over any bureau, office, officer, board, branch, or division of the public service transferred to the Department of Commerce, or any business arising therefrom or pertaining thereto, or in relation to the duties performed by and authority conferred by law upon such bureau, officer, office, board, branch, or division of the public service, whether of an appellate or revisory character or otherwise, shall be vested in and exercised by the Secretary of Commerce.

(Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829.)

CODIFICATION

Section was formerly classified to section 599 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of the Department of Commerce, with certain exceptions, to the Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title.

GOVERNMENT INTEREST IN PATENTS

For duties and powers of the Secretary of Commerce with respect to the interest of the Government in patents, see executive orders set out as notes under section 266 of Title 35, Patents.

FOREIGN INVESTMENT IN THE UNITED STATES

For functions of the Secretary of Commerce respecting the collection and use of data on foreign investment in the United States, see Sec. 2 of Ex. Ord. No. 11858, May 7, 1975, 40 F.R. 20263, set out as a note under section 2841 of Title 22, Foreign Relations and Intercourse.

§ 1514. Basic authority for performance of certain functions and activities of Department

Appropriations are authorized for the following activities of the Department of Commerce:

(a) furnishing to employees of the Department of Commerce and other Federal agencies (including Army, Navy, and Air Force personnel where Army, Navy, or Air Force facilities or supplies are not available and upon request of the service concerned), and their dependents, in Alaska and other points outside the continental United States, free emergency medical services by contract or otherwise and free emergency medical supplies, where in the judgment of the Secretary furnishing of such supplies and services is necessary;

(b) when deemed necessary by the Secretary of Commerce, purchasing, transporting, storing, and distributing food and other subsistence supplies for resale to employees of the Department of Commerce and other Federal agencies (including Army, Navy, and Air Force personnel where Army, Navy, or Air Force facilities or supplies are not available and upon request of the service concerned), and their dependents, in Alaska and other points outside the continental United States at a reasonable value as determined by the Secretary of Commerce, the proceeds from such resales to be credited to the appropriation from which the expenditure was made;

(c) when deemed necessary by the Secretary of Commerce, the establishment, maintenance, and operation of messing facilities, by contract or otherwise, in Alaska and other points outside the continental United States where suitable family facilities are not available, such service to be furnished to employees of the Department of Commerce and other Federal agencies (including Army, Navy, and Air Force personnel where Army, Navy, or Air Force facilities are not available and upon request of the service concerned), and their dependents, in accordance with regulations established by the Secretary of Commerce, and at a reasonable value determined in accordance therewith, the proceeds from the furnishing of such services to be credited to the appropriation from which the expenditures are made;

(d) reimbursement, under regulations prescribed by the Secretary, of officers and employees in or under the Department of Commerce, for food, clothing, medicines, and other supplies furnished by them in emergencies for the temporary relief of distressed persons in remote localities;

(e) providing motion-picture equipment and film for recreation of crews of vessels of the National Ocean Survey, for recreation of employees in remote localities where such facilities are not available, and for training purposes;

(f) erecting, altering, repairing, equipping, furnishing, and maintaining, by contract or otherwise, such living and working quarters and facilities as may be necessary to carry out its authorized work at remote localities not on foreign soil where such living and working accommodations are not otherwise available.

(Oct. 26, 1949, ch. 733, 63 Stat. 907; Aug. 30, 1954, ch. 1076, § 1(11), 68 Stat. 967; Jan. 2, 1975, Pub. L. 93-608, § 1(3), 88 Stat. 1967.)

CODIFICATION

Section was formerly classified to section 596a of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, § 1, Sept. 6, 1966, 80 Stat. 378.

AMENDMENTS

1975—Subsec. (b). Pub. L. 93-608 struck out proviso requiring an annual report to Congress of the total expenditures made for such supplies and total proceeds from resales.

1954—Subsec. (c). Act Aug. 30, 1954, repealed a proviso requiring the Secretary of Commerce to submit annually to Congress a report showing the expenditures for the establishment, maintenance, and operation of messing facilities in Alaska and other points outside the continental United States.

CHANGE OF NAME

The Coast and Geodetic Survey was consolidated with the National Weather Bureau in 1965 to form the Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318. The Environmental Science Services Administration was abolished in 1970 and its personnel, property, records, etc., were transferred to the National Oceanic and Atmospheric Administration by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out as a note under section 1511 of this title. By order of the Acting Associate Administrator of the National Oceanic and Atmospheric Administration, 35 F.R. 19249, Dec. 19, 1970, the Coast and Geodetic Survey was redesignated the National Ocean Survey. See notes under section 311 of this title.

§ 1515. Records, etc., of bureaus transferred to Department of Commerce

The official records and papers on file in and pertaining exclusively to the business of any bureau, office, department, or branch of the public service transferred to the Department of Commerce, together with the furniture in use in such bureau, office, department, or branch of the public service, are transferred to the Department of Commerce.

(Feb. 14, 1903, ch. 552, § 4, 32 Stat. 826.)

CODIFICATION

Section was formerly classified to section 598 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, § 1, Sept. 6, 1966, 80 Stat. 378.

CHANGE OF NAME

Act Mar. 4, 1913, ch. 141, 37 Stat. 736, provided that the Department of Commerce and Labor and the Secretary of Commerce and Labor were to be thereafter called the Department of Commerce and the Secretary of Commerce.

§ 1516. Statistical information

The Secretary of Commerce shall have control of the work of gathering and distributing statistical information naturally relating to the subjects confided to his department; and he shall have the power and authority to rearrange the statistical work of the bureaus and offices confided to the Department of Commerce, and to consolidate any of the statistical bureaus and offices above described. He shall also have authority to call upon other departments of the Government for statistical data and results obtained by them; and he may collate, arrange, and publish such statistical information so obtained in such manner as to him may seem wise.

(Feb. 14, 1903, ch. 552, § 4, 32 Stat. 826.)

CODIFICATION

Section was formerly classified to section 601 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, § 1, Sept. 6, 1966, 80 Stat. 378.

CHANGE OF NAME

Act Mar. 4, 1913, ch. 141, 37 Stat. 736, provided that the Department of Commerce and Labor and the Secretary of Commerce and Labor were to be thereafter called the Department of Commerce and the Secretary of Commerce.

CROSS REFERENCES

Statistical information generally, see section 171 et seq. of this title.

§ 1516a. Statistics relating to social, health, and economic conditions of Americans of Spanish origin or descent

The Department of Commerce, the Department of Labor, the Department of Health, Education, and Welfare, and the Department of Agriculture shall each collect, and publish regularly, statistics which indicate the social, health, and economic condition of Americans of Spanish origin or descent.

(Pub. L. 94-311, § 2, June 16, 1976, 90 Stat. 688.)

DEVELOPMENT OF PROGRAM FOR THE COLLECTION, ANALYSIS AND PUBLICATION OF DATA

Section 3 of Pub. L. 94-311 provided that: "The Director of the Office of Management and Budget, in cooperation with the Secretary of Commerce and with the heads of other data-gathering Federal agencies, shall develop a Government-wide program for the collection, analysis, and publication of data with respect to Americans of Spanish origin or descent."

§ 1517. Transfer of statistical or scientific work

The President is authorized, by order in writing, to transfer at any time the whole or any part of any office, bureau, division, or other branch of the public service engaged in statistical or scientific work, from the Department of State, the Department of the Treasury, the Department of Defense, the Department of Justice, the United States Postal Service, or the Department of the Interior, to the Department of Commerce; and in every such case the duties and authority performed by and conferred by law upon such office, bureau, division, or other branch of the public service, or the part thereof so transferred, shall be thereby transferred with such office, bureau, division, or other branch of the public service, or the part thereof which is so transferred. All power and authority conferred by law, both supervisory and appellate, upon the department from which such transfer is made, or the Secretary thereof, in relation to the said office, bureau, division, or other branch of the public service, or the part thereof so transferred, shall immediately, when such transfer is so ordered by the President, be fully conferred upon and vested in the Department of Commerce, or the Secretary thereof, as the case may be, as to the whole or part of such office, bureau, division, or other branch of the public service so transferred.

(Feb. 14, 1903, ch. 552, § 12, 32 Stat. 830; July 26, 1947, ch. 343, title II, § 201(a), 61 Stat. 501; Aug. 10, 1949, ch. 412, § 4, 63 Stat. 579; Aug. 12, 1970, Pub. L. 91-375, § 6(*o*), 84 Stat. 783.)

CODIFICATION

The Department of Defense was substituted for the Departments of the Army and Navy by act July 26, 1947, as amended Aug. 10, 1949.

The "United States Postal Service" was substituted for the "Post Office Department" on authority of section 6(*o*) of Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 783, section 2 of which enacted Title 39, Postal Service

Section was formerly classified to section 602 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, § 1, Sept. 6, 1966, 80 Stat. 378.

CHANGE OF NAME

Act Mar. 4, 1913, ch. 141, 37 Stat. 736, provided that the Department of Commerce and Labor and the Secretary of Commerce and Labor were to be thereafter called the Department of Commerce and the Secretary of Commerce.

EX. ORD. NO. 11564. TRANSFER OF CERTAIN PROGRAMS AND ACTIVITIES TO SECRETARY OF COMMERCE

Ex. Ord. No. 11564, Oct. 6, 1970, 35 F.R. 15801, provided:

By virtue of the authority vested in me by section 12 of the Act of February 14, 1903, as amended (15 U.S.C. 1517) [this section] and section 12(d) of the Act of October 15, 1966 (49 U.S.C. 1651 note), as President of the United States, and in further implementation of Reorganization Plan No. 4 of 1970 [set out as a note under section 1511 of this title] transfering certain functions to the Secretary of Commerce and establishing the National Oceanic and Atmospheric Administration in the Department of Commerce, it is ordered as follows:

SECTION 1. (a) The following programs and activities are hereby transferred to the Secretary of Commerce:

(1) The National Oceanographic Instrumentation Center of the Department of the Navy, Department of Defense.

(2) The National Oceanographic Data Center of the Department of the Navy, Department of Defense.

(3) The Ocean Station Vessel Meteorological Program of the Department of the Navy, Department of Defense.

(4) The Trust Territories Upper Air Observation Program of the Department of the Navy, Department of Defense.

(5) The Hydroclimatic Network Program of the Corps of Engineers of the Department of the Army, Department of Defense.

(6) The National Data Buoy Development Project of the Coast Guard, Department of Transportation.

(b) All of the power and authority of the transferor Departments conferred by law which is related to or incidental to, in support of, or necessary for, the operation of the programs and activities transferred by subsection (a) above, may be utilized by the Secretary of Commerce for the operation of those programs and activities.

SEC. 2. (a) Such personnel and positions and so much of the property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, authorized, affected, available, or to be made available in connection with the operation of the programs and activities transferred by section 1 hereof from the Department of Defense and the Department of Transportation as the Director of the Office of Management and Budget shall determine shall be transferred from those Departments to the Department of Commerce at such time or times as the Director shall direct.

(b) Subject to the direction of the Director of the Office of Management and Budget, the appropriate officers of the Government shall make necessary administrative arrangements for the assumption by the Secretary of Commerce of the programs and activities so transferred.

RICHARD NIXON.

§ 1518. Custody of buildings; officers transferred

The Secretary of Commerce shall have charge, in the buildings or premises occupied by or appropriated to the Department of Commerce, of the library, furniture, fixtures, records, and other property pertaining to it or acquired for use in its business; and he shall be allowed to expend for periodicals and the purposes of the library, and for the rental of appropriate quarters for the accommodation of the Department of Commerce within the District of Columbia, and for all other incidental expenses, such sums as Congress may provide from time to time. Where any office, bureau, or branch of the public service transferred to the Department of Commerce is occupying rented buildings or premises, it may still continue to do so until other suitable quarters are provided for its use. All officers, clerks, and employees employed on February 14, 1903, in or by any of the bureaus, offices, departments, or branches of the public service transferred to the Depart-

ment of Commerce are each and all transferred to said department, except where otherwise provided by law. All laws prescribing the work and defining the duties of the several bureaus, offices, departments, or branches of the public service transferred to and made a part of the Department of Commerce shall, so far as the same are not in conflict with the provisions of this Act, remain in full force and effect until otherwise provided by law.

(Feb. 14, 1903, ch. 552, § 9, 32 Stat. 829.)

REFERENCES IN TEXT

This Act, referred to in text, is act Feb. 14, 1903, ch. 552, 32 Stat. 825, which is classified to sections 175, 1501, 1504, 1510, 1511, 1512, 1513, 1515, 1516, 1517 to 1519 of this title.

CODIFICATION

Section was formerly classified to section 603 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, § 1, Sept. 6, 1966, 80 Stat. 378.

CHANGE OF NAME

Act Mar. 4, 1913, ch. 141, 37 Stat. 736, provided that the Department of Commerce and Labor and the Secretary of Commerce and Labor were to be thereafter called the Department of Commerce and the Secretary of Commerce.

§ 1519. Annual and special reports

The Secretary of Commerce shall annually, at the close of each fiscal year, make a report in writing to Congress, giving an account of all moneys received and disbursed by him and his Department, and describing the work done by the Department in fostering, promoting, and developing the foreign and domestic commerce, the mining, manufacturing, shipping, and fishery industries, and the transportation facilities, of the United States, and making such recommendations as he shall deem necessary for the effective performance of the duties and purposes of the Department. He shall also from time to time make such special investigations and reports as he may be required to do by the President, or by either House of Congress, or which he himself may deem necessary and urgent.

(Feb. 14, 1903, ch. 552, § 8, 32 Stat. 829.)

CODIFICATION

Section was formerly classified to section 604 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, § 1, Sept. 6, 1966, 80 Stat. 378.

CHANGE OF NAME

Act Mar. 4, 1913, ch. 141, 37 Stat. 736, provided that the Department of Commerce and Labor and the Secretary of Commerce and Labor were to be thereafter called the Department of Commerce and the Secretary of Commerce.

§ 1520. Repealed. Pub. L. 91-412, § 3(d), Sept. 25, 1970, 84 Stat. 864

Section, act Dec. 19, 1942, ch. 780, 56 Stat. 1067, which authorized Secretary of Commerce to establish schedule of fees or charges for services or publications furnished by Department of Commerce, excepting Federal and State governments, provided for covering proceeds thereof into the Treasury as miscellaneous receipts, and specified that its provisions shall not alter, amend, modify, or repeal any existing law for prescription of fees or charges, is now covered by sections 1525 to 1527 of this title.

§ 1521. Working capital fund; establishment; amount; uses; reimbursement

There is established a working capital fund of $100,000, without fiscal year limitation, for the payment of salaries and other expenses necessary to the maintenance and operation of (1) central duplicating, photographic, drafting, and photostating services and (2) such other services as the Secretary, with the approval of the Director of the Office of Management and Budget, determines may be performed more advantageously as central services; said fund to be reimbursed from applicable funds of bureaus, offices, and agencies for which services are performed on the basis of rates which shall include estimated or actual charges for personal services, materials, equipment (including maintenance, repairs, and depreciation) and other expenses: *Provided*, That such central services shall, to the fullest extent practicable be used to make unnecessary the maintenance of separate like services in the bureaus, offices, and agencies of the Department: *Provided further*, That a separate schedule of expenditures and reimbursements, and a statement of the current assets and liabilities of the working capital fund as of the close of the last completed fiscal year, shall be included in the annual Budget.

(June 28, 1944, ch. 294, title III, § 1, 58 Stat. 415; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

CODIFICATION

Section was formerly classified to section 607 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, § 1, Sept. 6, 1966, 80 Stat. 378.

TRANSFER OF FUNCTIONS

All functions vested by law (including reorganization plan) in the Bureau of the Budget or the Director of the Bureau of the Budget were transferred to the President of the United States by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970 redesignated the Bureau of the Budget as the Office of Management and Budget.

§ 1522. Acceptance of gifts and bequests for purposes of the Department; separate fund; disbursements

The Secretary of Commerce is hereby authorized to accept, hold, administer, and utilize gifts and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Department of Commerce. Gifts and bequests of money and the proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury in a separate fund and shall be disbursed upon order of the Secretary of Commerce. Property accepted pursuant to this provision, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift or bequest.

(Pub. L. 88-611, § 1, Oct. 2, 1964, 78 Stat. 991.)

Codification

Section was formerly classified to section 608a of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, § 1, Sept. 6, 1966, 80 Stat. 378.

Transfer of Funds

Section 4(b) of Pub. L. 88-611 provided that: "All gifts and bequests received under the provisions of law repealed by subsection (a) of this section [which repealed section 278a of this title, section 883g of Title 33, Navigation and Navigable Waters, and section 1126(g) of Title 46, Shipping] and all funds held on the date of enactment of this Act [Oct. 2, 1964] in the United States Merchant Marine Academy general gift fund, established by subsection (g) of section 216 of the Merchant Marine Act, 1936 [former subsec. (g) of section 1126 of Title 46], shall be transferred to the fund authorized by this Act [sections 1522 to 1524 of this title] and shall be administered in accordance with the provisions of this Act [sections 1522 to 1524 of this title]."

Section Referred to in Other Sections

This section is referred to in sections 1523, 1524 of this title.

§ 1523. Tax status of gifts and bequests of property

For the purpose of Federal income, estate, and gift taxes, property accepted under section 1522 of this title shall be considered as a gift or bequest to or for the use of the United States.

(Pub. L. 88-611, § 2, Oct. 2, 1964, 78 Stat. 991.)

Codification

Section was formerly classified to section 608b of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, § 1, Sept. 6, 1966, 80 Stat. 378.

§ 1524. Investment and reinvestments of moneys; credit and disbursement of interest

Upon the request of the Secretary of Commerce, the Secretary of the Treasury may invest and reinvest in securities of the United States or in securities guaranteed as to principal and interest by the United States any moneys contained in the fund authorized herein. Income accruing from such securities, and from any other property accepted pursuant to section 1522 of this title, shall be deposited to the credit of the fund authorized herein, and shall be disbursed upon order of the Secretary of Commerce.

(Pub. L. 88-611, § 3, Oct. 2, 1964, 78 Stat. 991.)

Codification

Section was formerly classified to section 608c of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, § 1, Sept. 6, 1966, 80 Stat. 378.

§ 1525. Special studies; special compilations, lists, bulletins, or reports; clearinghouse for technical information; transcripts or copies; cost payments for special work; joint projects: cost apportionment, waiver

The Secretary of Commerce is authorized, upon the request of any person, firm, organization, or others, public or private, to make special studies on matters within the authority of the Department of Commerce; to prepare from its records special compilations, lists, bulletins, or reports; to perform the functions authorized by section 1152 of this title; and to furnish transcripts or copies of its studies, compilations, and other records; upon the payment of the actual or estimated cost of such special work.

In the case of nonprofit organizations, research organizations, or public organizations or agencies, the Secretary may engage in joint projects, or perform services, on matters of mutual interest, the cost of which shall be apportioned equitably, as determined by the Secretary, who may, however, waive payment of any portion of such costs by others, when authorized to do so under regulations approved by the Office of Management and Budget.

(Pub. L. 91-412, § 1, Sept. 25, 1970, 84 Stat. 864; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

Transfer of Functions

All functions vested by law (including reorganization plan) in the Bureau of the Budget or the Director of the Bureau of the Budget were transferred to the President of the United States by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970 redesignated the Bureau of the Budget as the Office of Management and Budget.

§ 1526. Receipts for work or services; deposit in special accounts; availability for payment of costs, repayment or advances to appropriations or funds, refunds, credits to working capital funds; appropriation limitation of annual expenditures from accounts

All payments for work or services performed or to be performed under this Act shall be deposited in a separate account or accounts which may be used to pay directly the costs of such work or services, to repay or make advances to appropriations or funds which do or will initially bear all or part of such costs, or to refund excess sums when necessary: *Provided*, That said receipts may be credited to a working capital fund otherwise established by law, and used under the law governing said funds, if the fund is available for use by the agency of the Department of Commerce which is responsible for performing the work or services for which payment is received. Acts appropriating funds to the Department of Commerce may include provisions limiting annual expenditure from said account or accounts.

(Pub. L. 91-412, § 2, Sept. 25, 1970, 84 Stat. 864.)

References in Text

This Act, referred to in the text, means Pub. L. 91-412, which enacted sections 1525 to 1527, amended section 1153, and repealed sections 189, 189a, 192, 192a, 1153a, and 1520 of this title.

§ 1527. Fees or charges for services or publications under existing law unaffected

Except as to those laws expressly repealed herein, nothing in this Act shall alter, amend, modify, or repeal any existing law prescribing fees or charges or authorizing the prescribing of fees or charges for services performed or for any publication furnished by the Department of Commerce, or any of its several bureaus or offices.

(Pub. L. 91-412, § 4, Sept. 25, 1970, 84 Stat. 865.)

REFERENCES IN TEXT

This Act, referred to in the text, means Pub. L. 91-412, which enacted sections 1525 to 1527, amended section 1153, and repealed sections 189, 189a, 192, 192a, 1153a, and 1520 of this title.

Laws expressly repealed herein, referred to in the text, means amendment of section 1153 and repeal of sections 189, 189a, 192, 192a, 1153a, and 1520 of this title, as heretofore noted.

CHAPTER 41—CONSUMER CREDIT PROTECTION

SUBCHAPTER I—CONSUMER CREDIT COST DISCLOSURE

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SUBCHAPTER I—CONSUMER CREDIT COST DISCLOSURE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 12 section 2610.

SUBCHAPTER REFERRED TO IN D.C. CODE

This subchapter is referred to in sections 28-3308, 28-3603, 28-3815 of the District of Columbia Code.

PART A—GENERAL PROVISIONS

§ 1601. Congressional findings and declaration of purpose

(a) The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

(b) The Congress also finds that there has been a recent trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that these leases have been offered without adequate cost disclosures. It is the purpose of this subchapter to assure a meaningful disclosure of the terms of leases of personal property for personal, family, or household purposes so as to enable the lessee to compare more readily the various lease terms available to him, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and to assure meaningful and accurate disclosures of lease terms in advertisements.

(Pub. L. 90-321, title I, § 102, May 29, 1968, 82 Stat. 146; Pub. L. 93-495, title III, § 302, Oct. 28, 1974, 88 Stat. 1511; Pub. L. 94-240, § 2, Mar. 23, 1976, 90 Stat. 257.)

Amendments

1976—Pub. L. 94-240 designated existing provisions as subsec. (a) and added subsec. (b).

1974—Pub. L. 93-495 added provisions expanding purposes of subchapter to include protection of consumer against inaccurate and unfair credit billing and credit card practices.

Effective Date of 1976 Amendment.

Amendment by Pub. L. 94-240 effective upon expiration of one year after Mar. 23, 1976, see section 6 of Pub. L. 94-240, set out as a note under section 1667 of this title.

Effective Date of 1974 Amendment

For effective date of amendment by Pub. L. 93-495, see section 308 of Pub. L. 93-495, set out as a note under section 1666 of this title.

Effective Date

Section 504(a) of Pub. L. 90-321 provided that this part is effective May 29, 1968.

Short Title of 1976 Amendments

Section 1 of Pub. L. 94-240 provided that: "This Act [which enacted sections 1667 to 1667e of this title, amended this section and section 1640 of this title, and enacted provisions set out as a note under section 1667 of this title] may be cited as the 'Consumer Leasing Act of 1976'."

Pub. L. 94-239, § 1(a), Mar. 23, 1976, 90 Stat. 251, provided that: "This Act [enacting section 1691f of this title, amending this section and sections 1691b, 1691c, 1691d, 1691e of this title, repealing section 1609 of this title, enacting provisions set out as notes under this section and repealing provision set out as a note under this section] may be cited as the 'Equal Credit Opportunity Act Amendments of 1976'."

Short Title

Section 1 of Pub. L. 90-321 provided that: "This Act [enacting this chapter, sections 891 to 896 of Title 18, Crimes and Criminal Procedure, and provisions set out as notes under this section, sections 1631 and 1671 of this title, and section 891 of Title 18] may be cited as the Consumer Credit Protection Act."

Section 101 of title I of Pub. L. 90-321 provided that: "This title [enacting this subchapter] may be cited as the Truth in Lending Act."

Section 301 of title III of Pub. L. 93-495 provided that: "This title [which enacted sections 1666 to 1666j of this title, amended this section and sections 1602, 1610, 1631, 1632, and 1637 of this title, and enacted provision set out as a note under section 1666 of this title] may be cited as the 'Fair Credit Billing Act'."

Section 601 of title VI of Pub. L. 90-321, as added by Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1127, provided that: "This title [which enacted subchapter III of this chapter] may be cited as the 'Fair Credit Reporting Act'."

Section 709 of title VII of Pub. L. 90-321, as added by section 1(b) of Pub. L. 94-239, Mar. 23, 1976, 90 Stat. 251, provided that: "This title [enacting subchapter IV of this chapter and notes set out under section 1691 of this title] may be cited as the 'Equal Credit Opportunity Act'."

Section 1(c) of Pub. L. 94-239 repealed section 501 of Pub. L. 93-495, title V, Oct. 28, 1974, 88 Stat. 1521, which provided that subchapter IV of this chapter and notes set out under section 1691 were to be cited as the "Equal Credit Opportunity Act".

Severability of Provisions

Section 501 of Pub. L. 90-321 provided that: "If a provision enacted by this Act [which enacted this chapter, sections 891 to 896 of Title 18, Crimes and Criminal Procedure, and provisions set out as notes under this section, sections 1631 and 1671 of this title, and section 891 of Title 18], is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this Act is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications."

National Commission on Consumer Finance

Title IV, §§ 401 to 407, of Pub. L. 90-321, as amended by Pub. L. 91-344, July 20, 1970, 84 Stat. 440; Pub. L. 92-321, June 30, 1972, 86 Stat. 382, established a bipartisan National Commission on Consumer Finance to study the functioning and structure of the consumer finance industry as well as consumer credit transactions generally and to report on (1) the adequacy of existing arrangements to provide consumer credit at reasonable rates, (2) the adequacy of existing regulatory mechanisms to protect the public from unfair practices and insure the informed use of consumer credit, and (3) the desirability of Federal chartering of consumer finance companies or other Federal regulatory measures. The Commission was to submit a final report by Dec. 31, 1972, and was to cease to exist after submission of such report.

Inference of Legislative Intent in Section Captions and Catchlines

Section 502 of Pub. L. 90-321 provided that: "Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the legislative intent with respect to any provision enacted by this Act [which enacted this chapter, section 891 to 896 of Title 18, Crimes and Criminal Procedure, and provisions set out as notes under this section, sections 1631 and 1671 of this title, and section 891 of Title 18] may be drawn from them."

Grammatical Usages

Section 503 of Pub. L. 90-321 provided that: "In this Act [which enacted this chapter, sections 891 to 896 of Title 18, Crimes and Criminal Procedure, and provisions set out as notes under this section, sections 1631 and 1671 of this title, and section 891 of Title 18]:

"(1) The word 'may' is used to indicate that an action either is authorized or is permitted.

"(2) The word 'shall' is used to indicate that an action is both authorized and required.

"(3) The phrase 'may not' is used to indicate that an action is both unauthorized and forbidden.

"(4) Rules of law are stated in the indicative mood."

§ 1602. Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term "Board" refers to the Board of Governors of the Federal Reserve System.

(c) The term "organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(d) The term "person" means a natural person or an organization.

(e) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(f) The term "creditor" refers only to creditors who regularly extend, or arrange for the extension of, credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, whether in connection with loans, sales of property or services, or otherwise. For the purposes of the requirements imposed under Part D of this subchapter and sections 1637(a)(6), 1637(a)(7), 1637(a)(8), 1637(b)(1), 1637(b)(2), 1637(b)(3), 1637(b)(9), and 1637(b)(11) of this title, the term creditor shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Board shall, by regulation, apply these requirements to such card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open end credit plans. The provisions of this subchapter apply to any such creditor, irrespective of his or its status as a natural person or any type of organization.

(g) The term "credit sale" refers to any sale with respect to which credit is extended or arranged by the seller. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(h) The adjective "consumer", used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, household, or agricultural purposes.

(i) The term "open end credit plan" refers to a plan prescribing the terms of credit transactions which may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder.

(j) The term "adequate notice," as used in section 1643 of this title, means a printed notice to a cardholder which sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning. Such notice may be given to a cardholder by printing the notice on any credit card, or on each periodic statement of account, issued to the cardholder, or by any other means reasonably assuring the receipt thereof by the cardholder.

(k) The term "credit card" means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(*l*) The term "accepted credit card" means any credit card which the cardholder has requested and received or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor, or services on credit.

(m) The term "cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(n) The term "card issuer" means any person who issues a credit card, or the agent of such person with respect to such card.

(o) The term "unauthorized use," as used in section 1643 of this title, means a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit.

(p) The term "discount" as used in section 1666f of this title means a reduction made from the regular price. The term "discount" as used in section 1666f of this title shall not mean a surcharge.

(q) The term "surcharge" as used in this section and section 1666f of this title means any means of increasing the regular price to a cardholder which is not imposed upon customers paying by cash, check, or similar means."

(r) The term "State" refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(s) Any reference to any requirement imposed under this subchapter or any provision thereof includes reference to the regulations of the Board under this subchapter or the provision thereof in question.

(t) The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this subchapter does not in itself constitute a violation of this subchapter.

(Pub. L. 90-321, title I, § 103, May 29, 1968, 82 Stat. 147; Pub. L. 91-508, title V, § 501, Oct. 26, 1970, 84 Stat. 1126; Pub. L. 93-495, title III, § 303, Oct. 28, 1974, 88 Stat. 1511; Pub. L. 94-222, § 3(a), Feb. 27, 1976, 90 Stat. 197.)

AMENDMENTS

1976—Subsecs. (p), (q). Pub. L. 94-222 added subsecs. (p) and (q). Former subsecs. (p) and (q) redesignated (r) and (s).

Subsecs. (r) to (t). Pub. L. 94-222 redesignated former subsecs. (p) to (r) as (r) to (t), respectively.

1974—Subsec. (f). Pub. L. 93-495 added provision requiring the credit to be payable by agreement in more than four installments and defining the term "creditor" for the purposes of the requirements imposed under the enumerated sections of this chapter.

1970—Subsecs. (j) to (o). Pub. L. 91-508 added subsecs. (j) to (o). Former subsecs. (j) to (*l*) redesignated as subsecs. (p) to (r).

Subsecs. (p) to (r). Pub. L. 91-508 redesignated former subsecs. (j) to (*l*) as subsecs. (p) to (r).

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-495, see section 308 of Pub. L. 93-495, set out as a note under section 1666 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1667 of this title; title 12 sections 1735f-5, 2602; title 42 section 5511.

§ 1603. Exempted transactions

This subchapter does not apply to the following:

(1) Credit transactions involving extensions of credit for business or commercial purposes, or to government or governmental agencies or instrumentalities, or to organizations.

(2) Transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission.

(3) Credit transactions, other than real property transactions, in which the total amount to be financed exceeds $25,000.

(4) Transactions under public utility tariffs, if the Board determines that a State regulatory body regulates the charges for the public utility services involved, the charges for delayed payment, and any discount allowed for early payment.

(5) Credit transactions primarily for agricultural purposes in which the total amount to be financed exceeds $25,000.

(Pub. L. 90-321, title I, § 104, May 29, 1968, 82 Stat. 147; Pub. L. 93-495, title IV, § 402, Oct. 28, 1974, 88 Stat. 1517.)

AMENDMENTS

1974—Par. (5). Pub. L. 93-495 added par. (5).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-495 effective on Oct. 28, 1974, see section 416 of Pub. L. 93-495, set out as a note under section 1665a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1645 of this title.

§ 1604. Rules and regulations

The Board shall prescribe regulations to carry out the purposes of this subchapter. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(Pub. L. 90-321, title I, § 105, May 29, 1968, 82 Stat. 148.)

§ 1605. Determination of finance charge

(a) Definition

Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit, including any of the following types of charges which are applicable:

(1) Interest, time price differential, and any amount payable under a point, discount, or other system or additional charges.

(2) Service or carrying charge.

(3) Loan fee, finder's fee, or similar charge.

(4) Fee for an investigation or credit report.

(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

(b) Life, accident, or health insurance premiums included in finance charge

Charges or premiums for credit life, accident, or health insurance written in connection with any consumer credit transaction shall be included in the finance charges unless

(1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and

(2) in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(c) Property damage and liability insurance premiums included in finance charge

Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained.

(d) Items exempted from computation of finance charge in all credit transactions

If any of the following items is itemized and disclosed in accordance with the regulations of the Board in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction:

(1) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction.

(2) The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph (1) which would otherwise be payable.

(3) Taxes.

(4) Any other type of charge which is not for credit and the exclusion of which from the finance charge is approved by the Board by regulation.

(e) Items exempted from computation of finance charge in extensions of credit secured by an interest in real property

The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

(1) Fees or premiums for title examination, title insurance, or similar purposes.

(2) Fees for preparation of a deed, settlement statement, or other documents.

(3) Escrows for future payments of taxes and insurance.

(4) Fees for notarizing deeds and other documents.

(5) Appraisal fees.

(6) Credit reports.

(Pub. L. 90-321, title I, § 106, May 29, 1968, 82 Stat. 148.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1666f of this title.

§ 1606. Determination of annual percentage rate

(a) Definition

The annual percentage rate applicable to any extension of consumer credit shall be determined, in accordance with the regulations of the Board,

(1) in the case of any extension of credit other than under an open end credit plan, as

(A) that nominal annual percentage rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed, calculated according to the actuarial method of allocating payments made on a debt between the amount financed and the amount of the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed; or

(B) the rate determined by any method prescribed by the Board as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined under subparagraph (A).

(2) in the case of any extension of credit under an open end credit plan, as the quotient (expressed as a percentage) of the total finance charge for the period to which it relates divided by the amount upon which the finance charge for that period is based, multiplied by the number of such periods in a year.

(b) Computation of rate of finance charges for balances within a specified rate

Where a creditor imposes the same finance charge for balances within a specified range, the annual percentage rate shall be computed on the median balance within the range, except that if the Board determines that a rate so computed would not be meaningful, or would be materially misleading, the annual percentage rate shall be computed on such other basis as the Board may be regulation require.

(c) Rounding off of annual percentage rates which are converted from single add-on or other rates

The annual percentage rate may be rounded to the nearest quarter of 1 per centum for credit transactions payable in substantially equal installments when a creditor determines the total finance charge on the basis of a single add-on, discount, periodic, or other rate, and the rate is converted into an annual percentage rate under procedures prescribed by the Board.

(d) Use of rate tables or charts having allowable variance from determined rates

The Board may authorize the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with subsection (a)(1)(A) of this section by not more than such tolerances as the Board may allow. The Board may not allow a tolerance greater than 8 per centum of that rate except to simplify compliance where irregular payments are involved.

(e) Authorization of tolerances in determining annual percentage rates

In the case of creditors determining the annual percentage rate in a manner other than as described in subsection (c) or (d) of this section, the Board may authorize other reasonable tolerances.

(f) Form of expressing percentage rates

Prior to January 1, 1971, any rate required under this subchapter to be disclosed as a percentage rate may, at the option of the creditor, be expressed in the form of the corresponding ratio of dollars per hundred dollars.

(Pub. L. 90-321, title I, § 107, May 29, 1968, 82 Stat. 149.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1611, 1637 of this title.

§ 1607. Administrative enforcement

(a) Enforcing agencies

Compliance with the requirements imposed under this subchapter shall be enforced under

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], in the case of

(A) national banks, by the Comptroller of the Currency.

(B) member banks of the Federal Reserve System (other than national banks), by the Board.

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.

(2) section 5(d) of the Home Owner's Loan Act of 1933 [12 U.S.C. 1464(d)], section 407 of the National Housing Act [12 U.S.C. 1730], and sections 6(i) and 17 of the Federal Home Loan Bank Act [12 U.S.C. 1426(i), 1437], by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions.

(3) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

(4) the Federal Aviation Act of 1958 [49 U.S.C. 1301 et seq.], by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act.

(5) the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.] (except as provided in section 406 of that Act [7 U.S.C. 226, 227]), by the Secretary of Agriculture with respect to any activities subject to that Act.

(6) the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.] by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(b) Violations of this subchapter deemed violations of pre-existing statutory requirements; additional agency powers

For the purpose of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter, any other authority conferred on it by law.

(c) Federal Trade Commission as overall enforcing agency

Except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under subsection (a) of this section, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, [15 U.S.C. 41 et seq.], a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

(d) Rules and regulations

The authority of the Board to issue regulations under this subchapter does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this subchapter.

(Pub. L. 90-321, title I, § 108, May 29, 1968, 82 Stat. 150; Pub. L. 91-206, § 1, Mar. 10, 1970, 84 Stat. 49; Pub. L. 93-495, title IV, § 403, Oct. 28, 1974, 88 Stat. 1517.)

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in subsec. (a)(3), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§ 1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables volume.

The Federal Aviation Act of 1958, referred to in subsec. (a)(4), is Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 737, which is classified generally to chapter 20 (§ 1301 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 49 and Tables volume.

The Packers and Stockyards Act, 1921, referred to in subsec. (a)(5), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, which is classified to chapter 9 (§ 181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables volume.

The Farm Credit Act of 1971, referred to in subsec. (a)(6), is Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 585, which is classified generally to chapter 23 (§ 2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables Volume.

The Federal Trade Commission Act, referred to in subsec. (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

AMENDMENTS

1974—Subsec. (a)(4). Pub. L. 93-495, § 403(a), redesignated former subsec. (a)(5) as (a)(4). Former subsec. (a)(4), which related to enforcement by the Interstate Commerce Commission, was struck out.

Subsec. (a)(5). Pub. L. 93-495, § 403(a), redesignated former subsec. (a)(6) as (a)(5). Former subsec. (a)(5) redesignated (a)(4).

Subsec. (a)(6). Pub. L. 93-495, § 403(a), (b), added subsec. (a)(6). Former subsec. (a)(6) redesignated (a)(5).

CHANGE OF NAME

"Administrator of the National Credit Union Administration" was substituted for "Director of the Bureau of Federal Credit Unions" pursuant to section 101(2) and (3) of act June 26, 1934, ch. 750, title I, 48 Stat. 1216, as amended by Pub. L. 91-206, § 1, Mar. 10, 1970, 84 Stat. 49. See section 1752(2), (3) of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-495 effective on Oct. 28, 1974, see section 416 of Pub. L. 93-495, set out as a note under section 1665a of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 28-3815 of the District of Columbia Code.

§ 1608. Views of other agencies

In the exercise of its functions under this subchapter, the Board may obtain upon requests the views of any other Federal agency which, in the judgment of the Board, exercises regulatory or supervisory functions with respect to any class of creditors subject to this subchapter.

(Pub. L. 90-321, title I, § 109, May 29, 1968, 82 Stat. 150.)

§ 1609. Repealed. Pub. L. 94-239, § 3(b)(1), Mar. 23, 1976, 90 Stat. 253

Section, Pub. L. 90-321, title I, § 110, May 29, 1968, 82 Stat. 151, provided for the establishment of an advisory committee authorized to seek to achieve a fair representation of the interests of sellers of merchandise on credit, lenders, and the public.

EFFECTIVE DATE OF REPEAL

Repeal effective Mar. 23, 1976, see section 708 of Pub. L. 90-321, set out as a note under section 1691 of this title.

§ 1610. Effect on other laws

(a) Inconsistent provisions

This subchapter does not annul, alter, or affect, or exempt any creditor from complying with, the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the provisions of this subchapter or regulations thereunder, and then only to the extent of the inconsistency.

(b) State credit charge statutes

This subchapter does not otherwise annul, alter or affect in any manner the meaning, scope or applicability of the laws of any State, including, but not limited to, laws relating to the types, amounts or rates of charges, or any element or elements of charges, permissible under such laws in connection with the extension or use of credit, nor does this subchapter extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply.

(c) Disclosure as evidence

In any action or proceeding in any court involving a consumer credit sale, the disclosure of the annual percentage rate as required under this subchapter in connection with that sale may not be received as evidence that the sale was a loan or any type of transaction other than a credit sale.

(d) Contract or other obligations under State or Federal law

Except as specified in sections 1635, 1640, and 1666e of this title, this subchapter and the regulations issued thereunder do not affect the validity or enforceability of any contract or obligation under State or Federal law.

(Pub. L. 90-321, title I, § 111, May 29, 1968, 82 Stat. 151; Pub. L. 93-495, title III, § 307(b), Oct. 28, 1974, 88 Stat. 1516.)

AMENDMENTS

1974—Subsec. (d). Pub. L. 93-495 added reference to section 1666e of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-495, see section 308 of Pub. L. 93-495, set out as a note under section 1666 of this title.

§ 1611. Criminal liability for willful and knowing violation

Whoever willfully and knowingly

(1) gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this subchapter or any regulation issued thereunder.

(2) uses any chart or table authorized by the Board under section 1606 of this title in such a manner as to consistently understate the annual percentage rate determined under section 1606(a)(1)(A) of this title, or

(3) otherwise fails to comply with any requirement imposed under this subchapter,

shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(Pub. L. 90-321, title I, § 112, May 29, 1968, 82 Stat. 151.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1640 of this title.

§ 1612. Penalties inapplicable to governmental agencies

No civil or criminal penalty provided under this subchapter for any violation thereof may be imposed upon the United States or any agency thereof, or upon any State or political subdivision thereof, or any agency of any State or political subdivision.

(Pub. L. 90-321, title I, § 113, May 29, 1968, 82 Stat. 151.)

§ 1613. Annual reports to Congress by Board and Attorney General

Not later than January 3 of each year after 1969, the Board and the Attorney General shall, respectively, make reports to the Congress concerning the administration of their functions under this subchapter, including such recommendations as the Board and the Attorney General, respectively, deem necessary or appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with the requirements imposed under this subchapter is being achieved.

(Pub. L. 90-321, title I, § 114, May 29, 1968, 82 Stat. 151.)

§ 1614. Liability of assignees

Except as otherwise specifically provided in this subchapter, any civil action for a violation of this subchapter which may be brought against the original creditor in any credit transaction may be maintained against any subsequent assignee of the original creditor where the violation from which the alleged liability arose is apparent on the face of the instrument assigned unless the assignment is involuntary.

(Pub. L. 90-321, title I, § 115, as added Pub. L. 93-495, title IV, § 413(a), Oct. 28, 1974, 88 Stat. 1520.)

EFFECTIVE DATE

Section effective Oct. 28, 1974, see section 416 of Pub. L. 93-495, set out as a note under section 1665a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1667d of this title.

PART B—CREDIT TRANSACTIONS

§ 1631. General requirement of disclosure

(a) Clear and conspicuous disclosure to person extended consumer credit

Each creditor shall disclose clearly and conspicuously, in accordance with the regulations of the Board, to each person to whom consumer credit is extended, the information required under this part or part D of this subchapter.

(b) Statement of information where more than one obligor

If there is more than one obligor, a creditor need not furnish a statement of information required under this part or part D of this subchapter to more than one of them.

(Pub. L. 90-321, title I, § 121, May 29, 1968, 82 Stat. 152; Pub. L. 93-495, title III, § 307(c), (d), title IV, § 409, Oct. 28, 1974, 88 Stat. 1516, 1519; Pub. L. 94-205, § 11, Jan. 2, 1976, 89 Stat. 1159.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94-205 struck out subsec. (c), which related to disclosure including a full statement of closing costs incurred and permitted estimates of such information where the lender was not in a position to know exact information.

1974—Subsec. (a). Pub. L. 93-495, § 307(c), added reference to part D of this subchapter and struck out "and upon whom a finance charge is or may be imposed" following "extended".

Subsec. (b). Pub. L. 93-495, § 307(d), added reference to part D of this subchapter.

Subsec. (c). Pub. L. 93-495, § 409, added subsec (c).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-205 effective Jan. 2, 1976, see section 12 of Pub. L. 94-205, set out as a note under section 2602 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment of subsecs. (a) and (b) by section 307(c) and (d) of Pub. L. 93-495, see section 308 of Pub. L. 93-495, set out as a note under section 1666 of this title.

For effective date of former subsec. (c) of this section, see section 416 of Pub. L. 93-495, set out as a note under section 1665a of this title.

EFFECTIVE DATE

Section 504(b) of Pub. L. 90-321 provided that chapter 2 of title I, which enacted this section and sections 1632 to 1641 of this title, is effective July 1, 1969.

REAL ESTATE SETTLEMENT PROCEDURES

Provisions of Real Estate Settlement Procedures Act of 1974, as superseding provisions of subsec. (c) of this section insofar as applying to federally related mortgage loans, see section 2605 of Title 12, Banks and Banking.

§ 1632. Form of disclosure; additional information

(a) Regulations of the Board need not require that disclosures pursuant to this part or part D of this subchapter be made in the order set forth in this part or part D of this subchapter, and may permit the use of terminology different from that employed in this part or part D of this subchapter if it conveys substantially the same meaning.

(b) Any creditor may supply additional information or explanations with any disclosures required under this part or part D of this subchapter.

(Pub. L. 90-321, title I, § 122, May 29, 1968, 82 Stat. 152; Pub. L. 93-495, title III, § 307(e), (f), Oct. 28, 1974, 88 Stat. 1516, 1517.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-495, § 307(e), added reference to part D of this subchapter wherever appearing therein.

Subsec. (b). Pub. L. 93-495, § 307(f), added reference to part D of this subchapter.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-495, see section 308 of Pub. L. 93-495, set out as a note under section 1666 of this title.

§ 1633. Exemption for State-regulated transactions

The Board shall by regulation exempt from the requirements of this part any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this part, and that there is adequate provision for enforcement.

(Pub. L. 90-321, title I, § 123, May 29, 1968, 82 Stat. 152.)

§ 1634. Effect of subsequent occurrence

If information disclosed in accordance with this part is subsequently rendered inaccurate as the result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this part.

(Pub. L. 90-321, title I, § 124, May 29, 1968, 82 Stat. 152.)

§ 1635. Right of rescission as to certain transactions

(a) Disclosure of obligor's right to rescind

Except as otherwise provided in this section, in the case of any consumer credit transaction in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any real property which is used or is expected to be used as the residence of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required under this section and all other material disclosures required under this part, whichever is later, by notifying the creditor, in accordance with regulations of the Board, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, an adequate opportunity to the obligor to exercise his right to rescind any transaction subject to this section.

(b) Return of money or property following rescission

When an obligor exercises his right to rescind under subsection (a) of this section, he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within ten days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within ten days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it.

(c) Rebuttable presumption of delivery of required disclosures

Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this subchapter by a person to whom a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

(d) Modification and waiver of rights

The Board may, if it finds that such action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those regulations.

(e) Exempted transactions

This section does not apply to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling or to a consumer credit transaction in which an agency of a State is the creditor.

(f) Time limit for exercise of right

An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs earlier, notwithstanding the fact that the disclosures required under this section or any other material disclosures required under this part have not been delivered to the obligor.

(Pub. L. 90-321, title I, § 125, May 29, 1968, 82 Stat. 153; Pub. L. 93-495, title IV, §§ 404, 405, 412, Oct. 28, 1974, 88 Stat. 1517, 1519.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-495, § 404(1), added provision relating to security interest arising by operation of law.

Subsec. (b). Pub. L. 93-495, § 404(2), added provision relating to security interest arising by operation of law.

Subsec. (e). Pub. L. 93-495, § 412, added exemption for consumer credit transactions where a State agency is the creditor.

Subsec. (f). Pub. L. 93-495, § 405, added subsec. (f).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-495 effective on Oct. 28, 1974, see section 416 of Pub. L. 93-495, set out as a note under section 1665a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1610, 1641 of this title.

§ 1636. Periodic statements; contents

If a creditor transmits periodic statements in connection with any extension of consumer credit other than under an open end consumer credit plan, then each of those statements shall set forth each of the following items:

(1) The annual percentage rate of the total finance charge.

(2) The date by which, or the period (if any) within which, payment must be made in order to avoid additional finance charges or other charges.

(3) Such of the items set forth in section 1637(b) of this title as the Board may by regulation require as appropriate to the terms and conditions under which the extension of credit in question is made.

(Pub. L. 90-321, title I, § 126, May 29, 1968, 82 Stat. 153.)

§ 1637. Open end consumer credit plans

(a) Required disclosures by creditor

Before opening any account under an open end consumer credit plan, the creditor shall disclose to the person to whom credit is to be extended each of the following items, to the extent applicable:

(1) The conditions under which a finance charge may be imposed, including the time period (if any) within which any credit extended may be repaid without incurring a finance charge, except that the creditor may, at his election and without disclosure, impose no such finance charge if payment is received after the termination of such time period.

(2) The method of determining the balance upon which a finance charge will be imposed.

(3) The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge.

(4) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(5) If the creditor so elects,

(A) the average effective annual percentage rate of return received from accounts under the plan for a representative period of time; or

(B) whenever circumstances are such that the computation of a rate under subparagraph (A) would not be feasible or practical, or would be misleading or meaningless, a projected rate of return to be received from accounts under the plan.

The Board shall prescribe regulations, consistent with commonly accepted standards for accounting or statistical procedures, to carry out the purposes of this paragraph.

(6) The conditions under which any other charges may be imposed, and the method by which they will be determined.

(7) The conditions under which the creditor may retain or acquire any security interest in any property to secure the payment of any credit extended under the plan, and a description of the interest or interests which may be so retained or acquired.

(8) A statement, in a form prescribed by regulations of the Board of the protection provided by sections 1666 and 1666i of this title to an obligor and the creditor's responsibilities under sections 1666a and 1666i of this title. With respect to each of two billing cycles per year, at semi-annual intervals, the creditor shall transmit such statement to each obligor to whom the creditor is required to transmit a statement pursuant to subsection (b) of this section for such billing cycle.

(b) Statement required with each billing cycle

The creditor of any account under an open end consumer credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items to the extent applicable:

(1) The outstanding balance in the account at the beginning of the statement period.

(2) The amount and date of each extension of credit during the period and a brief identification on or accompanying the statement of each extension of credit in a form prescribed by regulations of the Board sufficient to enable the obligor to identify the transaction, or relate it to copies of sales vouchers or similar instruments previously furnished.

(3) The total amount credited to the account during the period.

(4) The amount of any finance charge added to the account during the period, itemized to show the amounts, if any, due to the application of percentage rates and the amount, if any, imposed as a minimum or fixed charge.

(5) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and, unless the annual percentage rate (determined under section 1606(a)(2) of this title) is required to be disclosed pursuant to paragraph (6), the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(6) Where the total finance charge exceeds 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, the total finance charge expressed as an annual percentage rate (determined under section 1606(a)(2) of this title), except that if the finance charge is the sum of two or more products of a rate times a portion of the balanace, the creditor may, in lieu of disclosing a single rate for the total charge, disclose each such rate expressed as an annual percentage rate, and the part of the balance to which it is applicable.

(7) At the election of the creditor, the average effective annual percentage rate of return (or the projected rate) under the plan as prescribed in subsection (a)(5) of this section.

(8) The balance on which the finance charge was computed and a statement of how the balance was determined. If the balance is determined without first deducting all credits during the period, that fact and the amount of such payments shall also be disclosed.

(9) The outstanding balance in the account at the end of the period.

(10) The date by which or the period (if any) within which, payment must be made to avoid additional finance charges, except that the creditor may, at his election and without disclosure, impose no such additional finance charge if payment is received after such date or the termination of such period.

(11) The address to be used by the creditor for the purpose of receiving billing inquiries from the obligor.

(c) Time for making required disclosures

In the case of any existing account under an open end consumer credit plan having an outstanding balance of more than $1 at or after the close of the creditor's first full billing cycle under the plan after the effective date of subsection (a) of this section or any amendments thereto, the items described in subsection (a) of this section, to the extent applicable and not previously disclosed, shall be disclosed in a notice mailed or delivered to the obligor not later than the time of mailing the next statement required by subsection (b) of this section.

(Pub. L. 90-321, title I, § 127, May 29, 1968, 82 Stat. 153; Pub. L. 93-495, title III, §§ 304, 305, title IV, §§ 411, 415, Oct. 28, 1974, 88 Stat. 1511, 1519, 1521.)

REFERENCES IN TEXT

The effective date of subsection (a) of this section or any amendments thereto, referred to in subsec. (c), is, respectively, the effective date of Pub. L. 90-321, which is July 1, 1969, and the effective date of any amendments to subsec. (a) of this section.

AMENDMENTS

1974—Subsec. (a)(1). Pub. L. 93-495, § 415(1), added exception relating to nonimposition of a finance charge at the election of the creditor and without disclosure.

Subsec. (a)(8). Pub. L. 93-495, § 304(a), added subsec. (a)(8).

Subsec. (b)(2). Pub. L. 93-495, § 411, substituted provisions requiring a brief identification on or accompanying the statement of credit extension sufficient to enable the obligor to identify the transaction or relate it to copies of sales vouchers or similar instruments previously furnished, for provisions requiring for purchases a brief identification, unless previously furnished, of the goods or services purchased.

Subsec. (b)(10). Pub. L. 93-495, § 415(2), added exception relating to nonimposition of additional finance charge at the election of the creditor and without disclosure.

Subsec. (b)(11). Pub. L. 93-495, § 305, added subsec. (b)(11).

Subsec. (c). Pub. L. 93-495, § 304(b), substituted provisions relating to disclosure requirements in a notice mailed or delivered to the obligor not later than the time of mailing the next statement required by subsec. (b) of this section, for provisions relating to disclosure requirements in a notice mailed or delivered to the obligor not later than thirty days after July 1, 1969.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment of subsecs. (a)(1) and (b)(10) by section 415 of Pub. L. 93-495 effective on Oct. 28, 1974, see section 416 of Pub. L. 93-495, set out as a note under section 1665a of this title.

For effective date of amendment of subsecs. (a)(8), (b)(11), and (c) by sections 304 and 305 of Pub. L. 93-495, see section 308 of Pub. L. 93-495, set out as a note under section 1666 of this title.

For effective date of amendment of subsec. (b)(2) by section 411 of Pub. L. 93-495, see section 416 of Pub. L. 93-495, set out as a note under section 1665a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602, 1636, 1663, 1666 of this title.

§ 1638. Sales not under open end credit plans

(a) Required disclosures by creditor

In connection with each consumer credit sale not under an open end credit plan, the creditor shall disclose each of the following items which is applicable:

(1) The cash price of the property or service purchased.

(2) The sum of any amounts credited as downpayment (including any trade-in).

(3) The difference between the amount referred to in paragraph (1) and the amount referred to in paragraph (2).

(4) All other charges, individually itemized, which are included in the amount of the credit extended but which are not part of the finance charge.

(5) The total amount to be financed (the sum of the amount described in paragraph (3) plus the amount described in paragraph (4)).

(6) Except in the case of a sale of a dwelling, the amount of the finance charge, which may in whole or in part be designated as a time-price differential or any similar term to the extent applicable.

(7) The finance charge expressed as an annual percentage rate except in the case of a finance charge

(A) which does not exceed $5 and is applicable to an amount financed not exceeding $75, or

(B) which does not exceed $7.50 and is applicable to an amount financed exceeding $75.

A creditor may not divide a consumer credit sale into two or more sales to avoid the disclosure of an annual percentage rate pursuant to this paragraph.

(8) The number, amount, and due dates or periods of payments scheduled to repay the indebtedness.

(9) The default, delinquency, or similar charges payable in the event of late payments.

(10) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

(b) Form and timing of disclosure

Except as otherwise provided in this part, the disclosures required under subsection (a) of this section shall be made before the credit is extended, and may be made by disclosing the information in the contract or other evidence of indebtedness to be signed by the purchaser.

(c) Timing of disclosure on mailed or telephoned orders

If a creditor receives a purchase order by mail or telephone without personal solicitation, and the cash price and the deferred payment price and the terms of financing, including the annual percentage rate, are set forth in the creditor's catalog or other printed material distributed to the public, then the disclosures required under subsection (a) of this section may be made at any time not later than the date the first payment is due.

(d) Timing of disclosure in cases of an addition of a deferred payment price to an existing outstanding balance

If a consumer credit sale is one of a series of consumer credit sales transactions made pursuant to an agreement providing for the addition of the deferred payment price of that sale to an existing outstanding balance, and the person to whom the credit is extended has approved in writing both the annual percentage rate or rates and the method of computing the finance charge or charges, and the creditor retains no security interest in any property as to which he has received payments aggregating the amount of the sales price including any finance charges attributable thereto, then the disclosure required under subsection (a) of this section for the particular sale may be made at any time not later than the date the first payment for that sale is due. For the purposes of this subsection, in the case of items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest price shall be deemed first paid for.

(Pub. L. 90-321, title I, § 128, May 29, 1968, 82 Stat. 155.)

§ 1639. Consumer loans not under open end credit plans

(a) Required disclosures by creditor

Any creditor making a consumer loan or otherwise extending consumer credit in a transaction which is neither a consumer credit sale nor under an open end consumer credit plan shall disclose each of the following items, to the extent applicable:

(1) The amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf.

(2) All charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge.

(3) The total amount to be financed (the sum of the amounts referred to in paragraph (1) plus the amounts referred to in paragraph (2)).

(4) Except in the case of a loan secured by a first lien on a dwelling and made to finance the purchase of that dwelling, the amount of the finance charge.

(5) The finance charge expressed as an annual percentage rate except in the case of a finance charge

(A) which does not exceed $5 and is applicable to an extension of consumer credit not exceeding $75, or

(B) which does not exceed $7.50 and is applicable to an extension of consumer credit exceeding $75.

A creditor may not divide an extension of credit into two or more transactions to avoid the disclosure of an annual percentage rate pursuant to this paragraph.

(6) The number, amount, and the due dates or periods of payments scheduled to repay the indebtedness.

(7) The default, delinquency, or similar charges payable in the event of late payments.

(8) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

(b) Form and timing of disclosure

Except as otherwise provided in this part, the disclosures required by subsection (a) of this section shall be made before the credit is extended, and may be made by disclosing the information in the note or other evidence of indebtedness to be signed by the obligor.

(c) Timing of disclosure on mailed or telephoned requests for an extension of credit

If a creditor receives a request for an extension of credit by mail or telephone without personal solicitation and the terms of financing, including the annual percentage rate for representative amounts of credit, are set forth in the creditor's printed material distributed to the public, or in the contract of loan or other printed material delivered to the obligor, then the disclosures required under subsection (a) of this section may be made at any time not later than the date the first payment is due.

(Pub. L. 90-321, title I, § 129, May 29, 1968, 82 Stat. 156.)

§ 1640. Civil liability

(a) Individual or class action for damages; amount of award; factors determining amount of award

Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this part or part D or E of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A)(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, or (ii) in the case of an individual action relating to a consumer lease under part E of this subchapter, 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in such action shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the creditor; and

(3) in the case of any successful action to enforce the foregoing liability the costs of the action, together with a reasonable attorney's fee as determined by the court.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(b) Correction of error within fifteen days

A creditor has no liability under this section for any failure to comply with any requirement imposed under this part or part E of this subchapter, if within fifteen days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to insure that the person will not be required to pay a charge in excess of the amount or percentage rate actually disclosed.

(c) Unintentional violations; bona fide errors

A creditor may not be held liable in any action brought under this section for a violation of this subchapter if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Liability of subsequent assignees of original creditor

Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in real property may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this part, and that it maintained procedures reasonably adapted to apprise it of the existence of any such violations.

(e) Jurisdiction of courts

Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

(f) Good faith compliance with rule, regulation, or interpretation of Board or with interpretation or approval of duly authorized official or employee of Federal Reserve System

No provision of this section or section 1611 of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(g) Recovery for multiple failures to disclose

The multiple failure to disclose to any person any information required under this part or part D or E of this subchapter to be disclosed in connection with a single account under an open end consumer credit plan, other single consumer credit sale, consumer loan, consumer lease, or other extension of consumer credit, shall entitle the person to a single recovery under this section but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries.

(h) Offset from amount owed to creditor

A person may not take any action to offset any amount for which a creditor is potentially liable to such person under subsection (a)(2) of this section against any amount owing to such creditor by such person, unless the amount of the creditor's liability to such person has been determined by judgment of a court of competent jurisdiction in an action to which such person was a party.

(Pub. L. 90-321, title I, § 130, May 29, 1968, 82 Stat. 157; Pub. L. 93-495, title IV, §§ 406, 407, 408(a)-(d), Oct. 28, 1974, 88 Stat. 1518; Pub. L. 94-222, § 3(b), Feb. 27, 1976, 90 Stat. 197; Pub. L. 94-240, § 4, Mar. 23, 1976, 90 Stat. 260.)

AMENDMENTS

1976—Pub. L. 94-240, § 4(1), added "or E" following "part D".

Subsec. (a)(2)(A). Pub. L. 94-240, § 4(2), designated existing provision as cl. (i) and added cl. (ii).

Subsec. (a)(2)(B). Pub. L. 94-240, § 4(3), substituted "lesser of $500,000" for "lesser of $100,000".

Subsec. (b). Pub. L. 94-240, § 4(4), added "or part E of this subchapter" following "this part" and struck out "finance" following "required to pay a".

Subsec. (f). Pub. L. 94-222 inserted following "by the Board" text reading "or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor" and substituted "interpretation, or approval" for "or interpretation" preceding "is amended".

Subsec. (g). Pub. L. 94-240, § 4(5), added "or part D or E of this subchapter" following "this part", added "consumer lease" following "consumer loan".

1974—Subsec. (a). Pub. L. 93-495, § 408(a), substituted provisions setting forth determination of amount of liability of any creditor failing to comply with any requirement imposed under part D of this subchapter or this part, for provisions setting forth determination of amount of liability of any creditor failing to disclose in connection with any consumer credit transaction any information required under this part to be disclosed to specified persons.

Subsec. (b). Pub. L. 93-495, § 408(b), added "for any failure to comply with any requirement imposed under this part," preceding "if within".

Subsec. (c). Pub. L. 93-495, § 408(c), substituted "subchapter" for "part".

Subsec. (f). Pub. L. 93-495, § 406, added subsec. (f).

Subsec. (g). Pub. L. 93-495, § 407, added subsec. (g).

Subsec. (h). Pub. L. 93-495, § 408(d), added subsec. (h).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-240 effective upon expiration of one year after Mar. 23, 1976, see section 6 of Pub. L. 94-240, set out as a note under section 1667 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-495 effective on Oct. 28, 1974, see section 416 of Pub. L. 93-495, set out as a note under section 1665a of this title.

DETERMINATION OF LIABILITY PRIOR TO OCTOBER 28, 1974

Section 408(e) of Pub. L. 93-495 provided that: "The amendments made by sections 406 [enacting subsec. (f) of this section], 407 [enacting subsec. (g) of this section], and 408 [enacting subsec. (h) of this section and amending subsecs. (a), (b) and (c) of this section] shall apply in determining the liability of any person under chapter 2 or 4 of the Truth in Lending Act [this part or part D of this subchapter], unless prior to the date of enactment of this Act [Oct. 28, 1974] such liability has been determined by final judgment of a court of competent jurisdiction and no further review of such judgment may be had by appeal or otherwise."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1610, 1641, 1667d of this title.

§ 1641. Written acknowledgment as proof of receipt

Except as provided in section 1635(c) of this title and except in the case of actions brought under section 1640(d) of this title, in any action or proceeding by or against any subsequent assignee of the original creditor without knowledge to the contrary by the assignee when he acquires the obligation, written acknowledgment of receipt by a person to whom a statement is required to be given pursuant to this subchapter shall be conclusive proof of the delivery thereof and, unless the violation is apparent on the face of the statement, of compliance with this part. This section does not affect the rights of the obligor in any action against the original creditor.

(Pub. L. 90-321, title I, § 131, May 29, 1968, 82 Stat. 157.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1667d of this title.

§ 1642. Issuance of credit cards

No credit card shall be issued except in response to a request or application therefor. This prohibition does not apply to the issuance of a credit card in renewal of, or in substitution for, an accepted credit card.

(Pub. L. 90-321, title I, § 132, as added Pub. L. 91-508, title V, § 502(a), Oct. 26, 1970, 84 Stat. 1126.)

EFFECTIVE DATE

Section 503(1) of Pub. L. 91-508 provided that: "Section 132 of such Act [this section] takes effect upon the date of enactment of this title [Oct. 26, 1970]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1645 of this title.

§ 1643. Liability of holder of credit card

(a) Limits on liability

A cardholder shall be liable for the unauthorized use of a credit card only if the card is an accepted credit card, the liability is not in excess of $50, the card issuer gives adequate notice to the cardholder of the potential liability, the card issuer has provided the cardholder with a self-addressed, prestamped notification to be mailed by the cardholder in the event of the loss or theft of the credit card, and the unauthorized use occurs before the cardholder has notified the card issuer that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise. Notwithstanding the foregoing, no cardholder shall be liable for the unauthorized use of any credit card which was issued on or after the effective date of this section, and, after the expiration of twelve months following such effective date, no cardholder shall be liable for the unauthorized use of any credit card regardless of the date of its issuance, unless (1) the conditions of liability specified in the preceding sentence are met, and (2) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it. For the purposes of this section, a cardholder notifies a card issuer by taking such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information whether or not any particular officer, employee, or agent of the card issuer does in fact receive such information.

(b) Burden of proof

In any action by a card issuer to enforce liability for the use of a credit card, the burden of proof is upon the card issuer to show that the use was authorized or, if the use was unauthorized, then the burden of proof is upon the card issuer to show that the conditions of liability for the unauthorized use of a credit card, as set forth in subsection (a) of this section, have been met.

(c) Liability imposed by other laws or by agreement with issuer

Nothing in this section imposes liability upon a cardholder for the unauthorized use of a credit card in excess of his liability for such use under other applicable law or under any agreement with the card issuer.

(d) Exclusiveness of liability

Except as provided in this section, a cardholder incurs no liability from the unauthorized use of a credit card.

(Pub. L. 90-321, title I, § 133, as added Pub. L. 91-508, title V, § 502(a), Oct. 26, 1970, 84 Stat. 1126.)

REFERENCES IN TEXT

The effective date of this section, referred to in subsec. (a), occurred upon the expiration of 90 days after Oct. 26, 1970.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602, 1645 of this title.

§ 1644. Fraudulent use of credit cards; penalties

(a) Use, attempt or conspiracy to use card in transaction affecting interstate or foreign commerce

Whoever knowingly in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating $1,000 or more; or

(b) Transporting, attempting or conspiring to transport card in interstate commerce

Whoever, with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(c) Use of interstate commerce to sell or transport card

Whoever, with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(d) Receipt, concealment, etc., of goods obtained by use of card

Whoever knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (1) within any one-year period has a value aggregating $1,000 or more, (2) has moved in or is part of, or which constitutes interstate or foreign commerce, and (3) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card; or

(e) Receipt, concealment, etc., of tickets for interstate or foreign transportation obtained by use of card

Whoever knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (1) within any one-year period have a value aggregating $500 or more, and (2) have been purchased or obtained with one or more counterfeit, fictious, altered, forged, lost, stolen, or fraudulently obtained credit cards; or

(f) Furnishing of money, etc., through use of card

Whoever in a transaction affecting interstate or foreign commerce furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating $1,000 or more, through the use of any counterfeit, fictious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(Pub. L. 90-321, title I, § 134, as added Pub. L. 91-508, title V, § 502(a), Oct. 26, 1970, 84 Stat. 1127, and amended Pub. L. 93-495, title IV, § 414, Oct. 28, 1974, 88 Stat. 1520.)

AMENDMENTS

1974—Pub. L. 93-495 generally reorganized provisions by designating former unlettered paragraph cls. (a) to (f), and as so designated, expanded prohibitions relating to fraudulent use of credit cards, decreased amount required for fraudulent use from a retail value aggregating $5,000, or more, to enumerated amounts for particular activities, and increased the punishment from a sentence of not more than five years to a sentence of not more than ten years.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-495 effective on Oct. 28, 1974, see section 416 of Pub. L. 93-495, set out as a note under section 1665a of this title.

EFFECTIVE DATE

Section 503(3) of Pub. L. 91-508 provided that: "Section 134 of such Act [this section] applies to offenses committed on or after such date of enactment [Oct. 26, 1970]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1645 of this title.

§ 1645. Business credit cards; limits on liability of employees

The exemption provided by section 1603(1) of this title does not apply to the provisions of sections 1642, 1643, and 1644 of this title, except that a card issuer and a business or other organization which provides credit cards issued by the same card issuer to ten or more of its employees may by contract agree as to liability of the business or other organization with respect to unauthorized use of such credit cards without regard to the provisions of section 1643 of this title, but in no case may such business or other organization or card issuer impose liability upon any employee with respect to unauthorized use of such a credit card except in accordance with and subject to the limitations of section 1643 of this title.

(Pub. L. 90-321, title I, § 135, as added Pub. L. 93-495, title IV, § 410(a), Oct. 28, 1974, 88 Stat. 1519.)

EFFECTIVE DATE

Section effective Oct. 28, 1974, see section 416 of Pub. L. 93-495, set out as a note under section 1665a of this title.

PART C—CREDIT ADVERTISING

§ 1661. Catalogs and multiple-page advertisements

For the purposes of this part, a catalog or other multiple-page advertisement shall be considered a single advertisement if it clearly and conspicuously displays a credit terms table on which the information required to be stated under this part is clearly set forth.

(Pub. L. 90-321, title I, § 141, May 29, 1968, 82 Stat. 158.)

EFFECTIVE DATE

Section 504(b) of Pub. L. 90-321 provided that chapter 3 of title I, which enacted this section and sections 1662 to 1665 of this title, is effective July 1, 1969.

§ 1662. Advertising of downpayments and installments

No advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit may state

(1) that a specific periodic consumer credit amount or installment amount can be arranged, unless the creditor usually and customarily arranges credit payments or installments for that period and in that amount.

(2) that a specified downpayment is required in connection with any extension of consumer credit, unless the creditor usually and customarily arranges downpayments in that amount.

(Pub. L. 90-321, title I, § 142, May 29, 1968, 82 Stat. 158.)

§ 1663. Advertising of open end credit plans

No advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit under an open end credit plan may set forth any of the specific terms of that plan or the appropriate rate determined under section 1637(a)(5) of this title unless it also clearly and conspicuously sets forth all of the following items:

(1) The time period, if any, within which any credit extended may be repaid without incurring a finance charge.

(2) The method of determining the balance upon which a finance charge will be imposed.

(3) The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge.

(4) Where periodic rates may be used to compute the finance charge, the periodic rates expressed as annual percentage rates.

(5) Such other or additional information for the advertising of open end credit plans as the Board may by regulation require to provide for adequate comparison of credit costs as between different types of open end credit plans.

(Pub. L. 90-321, title I, § 143, May 29, 1968, 82 Stat. 158.)

§ 1664. Advertising of credit other than open end plans

(a) Exclusion of open end credit plans

Except as provided in subsection (b) of this section, this section applies to any advertisement to aid, promote, or assist directly or indirectly any consumer credit sale, loan, or other extension of credit subject to the provisions of this subchapter, other than an open end credit plan.

(b) Advertisements of residential real estate

The provisions of this section do not apply to advertisements of residential real estate except to the extent that the Board may by regulation require.

(c) Rate of finance charge expressed as annual percentage rate.

If any advertisement to which this section applies states the rate of a finance charge, the advertisement shall state the rate of that charge expressed as an annual percentage rate.

(d) Requisite disclosures in advertisement

If any advertisement to which this section applies states the amount of the downpayment, if any, the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment, then the advertisement shall state all of the following items:

(1) The cash price or the amount of the loan as applicable.

(2) The downpayment, if any.

(3) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended.

(4) The rate of the finance charge expressed as an annual percentage rate.

(Pub. L. 90-321, title I, § 144, May 29, 1968, 82 Stat. 158.)

§ 1665. Nonliability of advertising media

There is no liability under this part on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

(Pub. L. 90-321, title I, § 145, May 29, 1968, 82 Stat. 159.)

§ 1665a. More-than-four-installment rule for advertisements

Any advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit repayable in more than four installments shall, unless a finance charge is imposed, clearly and conspicuously state, in accordance with the regulations of the Board:

"THE COST OF CREDIT IS INCLUDED IN THE PRICE QUOTED FOR THE GOODS AND SERVICES."

(Pub. L. 90-321, title I, § 146, as added Pub. L. 93-495, title IV, § 401(a), Oct. 28, 1974, 88 Stat. 1517.)

Effective Date

Section 416 of Pub. L. 93-495 provided that: "This title [enacting this section and sections 1614 and 1645 of this title, amending sections 1603, 1607, 1635, 1637(a)(1), (b)(10), 1640 and 1644 of this title, and enacting provision set out as a note under section 1640 of this title] takes effect upon the date of its enactment [Oct. 28, 1974], except that sections 409 [amending section 1631 of this title] and 411 [amending section 1637(b)(2) of this title] take effect upon the expiration of one year after the date of its enactment [Oct. 28, 1974]."

Part D—Credit Billing

Part Referred to in Other Sections

This part is referred to in sections 1602, 1631, 1632, 1640 of this title.

§ 1666. Correction of billing errors

(a) Written notice by obligor to creditor; time for and contents of notice; procedure upon receipt of notice by creditor

If a creditor, within sixty days after having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, receives at the address disclosed under section 1637(b)(11) of this title a written notice (other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 1637(a)(8) of this title) from the obligor in which the obligor—

(1) sets forth or otherwise enables the creditor to identify the name and account number (if any) of the obligor,

(2) indicates the obligor's belief that the statement contains a billing error and the amount of such billing error, and

(3) sets forth the reasons for the obligor's belief (to the extent applicable) that the statement contains a billing error,

the creditor shall, unless the obligor has, after giving such written notice and before the expiration of the time limits herein specified, agreed that the statement was correct—

(A) not later than thirty days after the receipt of the notice, send a written acknowledgment thereof to the obligor, unless the action required in subparagraph (B) is taken within such thirty-day period, and

(B) not later than two complete billing cycles of the creditor (in no event later than ninety days) after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the obligor under paragraph (2) either—

(i) make appropriate corrections in the account of the obligor, including the crediting of any finance charges on amounts erroneously billed, and transmit to the obligor a notification of such corrections and the creditor's explanation of any change in the amount indicated by the obligor under paragraph (2) and, if any such change is made and the obligor so requests, copies of documentary evidence of the obligor's indebtedness; or

(ii) send a written explanation or clarification to the obligor, after having conducted an investigation, setting forth to the extent applicable the reasons why the creditor believes the account of the obligor was correctly shown in the statement and, upon request of the obligor, provide copies of documentary evidence of the obligor's indebtedness. In the case of a billing error where the obligor alleges that the creditor's billing statement reflects goods not delivered to the obligor or his designee in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless he determines that such goods were actually delivered, mailed, or otherwise sent to the obligor and provides the obligor with a statement of such determination.

After complying with the provisions of this subsection with respect to an alleged billing error, a creditor has no further responsibility under this section if the obligor continues to make substantially the same allegation with respect to such error.

(b) Billing error

For the purpose of this section, a "billing error" consists of any of the following:

(1) A reflection on a statement of an extension of credit which was not made to the obligor or, if made, was not in the amount reflected on such statement.

(2) A reflection on a statement of an extension of credit for which the obligor requests additional clarification including documentary evidence thereof.

(3) A reflection on a statement of goods or services not accepted by the obligor or his designee or not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction.

(4) The creditor's failure to reflect properly on a statement a payment made by the obligor or a credit issued to the obligor.

(5) A computation error or similar error of an accounting nature of the creditor on a statement.

(6) Any other error described in regulations of the Board.

(c) Action by creditor to collect amount or any part thereof regarded by obligor to be a billing error

For the purposes of this section, "action to collect the amount, or any part thereof, indicated by an obligor under paragraph (2)" does not include the sending of statements of account to the obligor following written notice from the obligor as specified under subsection (a) of this section, if—

(1) the obligor's account is not restricted or closed because of the failure of the obligor to pay the amount indicated under paragraph (2) of subsection (a) of this section, and

(2) the creditor indicates the payment of such amount is not required pending the creditor's compliance with this section.

Nothing in this section shall be construed to prohibit any action by a creditor to collect any amount which has not been indicated by the obligor to contain a billing error.

(d) Restricting or closing by creditor of account regarded by obligor to contain a billing error

Pursuant to regulations of the Board, a creditor operating an open end consumer credit plan may not, prior to the sending of the written explanation or clarification required under paragraph (B)(ii), restrict or close an account with respect to which the obligor has indicated pursuant to subsection (a) of this section that he believes such account to contain a billing error solely because of the obligor's failure to pay the amount indicated to be in error. Nothing in this subsection shall be deemed to prohibit a creditor from applying against the credit limit on the obligor's account the amount indicated to be in error.

(e) Effect of noncompliance with requirements by creditor

Any creditor who fails to comply with the requirements of this section or section 1666a of this title forfeits any right to collect from the obligor the amount indicated by the obligor under paragraph (2) of subsection (a) of this section, and any finance charges thereon, except that the amount required to be forfeited under this subsection may not exceed $50.

(Pub. L. 90-321, title I, § 161, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1512.)

EFFECTIVE DATE

Section 308 of Pub. L. 93-495 provided that: "This title [which enacted this section and sections 1666a to 1666j of this title, amended sections 1601, 1602, 1610, 1631, 1632, and 1637 of this title, and enacted provision set out as a note under section 1601 of this title] takes effect upon the expiration of one year after the date of its enactment [Oct. 28, 1974]."

SHORT TITLE

Title III of Pub. L. 93-495, which is generally classified to this part, is known as the "Fair Credit Billing Act". For complete classification of Title III to the Code, see Short Title note set out under section 1601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections, 1637, 1666a of this title.

§ 1666a. Regulation of credit reports

(a) Reports by creditor on obligor's failure to pay amount regarded as billing error.

After receiving a notice from an obligor as provided in section 1666(a) of this title, a creditor or his agent may not directly or indirectly threaten to report to any person adversely on the obligor's credit rating or credit standing because of the obligor's failure to pay the amount indicated by the obligor under section 1666(a)(2) of this title, and such amount may not be reported as delinquent to any third party until the creditor has met the requirements of section 1666 of this title and has allowed the obligor the same number of days (not less than ten) thereafter to make payment as is provided under the credit agreement with the obligor for the payment of undisputed amounts.

(b) Reports by creditor on delinquent amounts in dispute; notification of obligor of parties notified of delinquency

If a creditor receives a further written notice from an obligor that an amount is still in dispute within the time allowed for payment under subsection (a) of this section, a creditor may not report to any third party that the amount of the obligor is delinquent because the obligor has failed to pay an amount which he has indicated under section 1666(a)(2) of this title, unless the creditor also reports that the amount is in dispute and, at the same time, notifies the obligor of the name and address of each party to whom the creditor is reporting information concerning the delinquency.

(c) Reports by creditor of subsequent resolution of delinquent amounts

A creditor shall report any subsequent resolution of any delinquencies reported pursuant to subsection (b) of this section to the parties to whom such delinquencies were initially reported.

(Pub. L. 90-321, title I, § 162, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1513.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1637, 1666 of this title.

§ 1666b. Length of billing period in credit statement for imposition of finance charge; effect of failure of timely mailing or delivery of statement

(a) If an open end consumer credit plan provides a time period within which an obligor may repay any portion of the credit extended without incurring an additional finance charge, such additional finance charge may not be imposed with respect to such portion of the credit extended for the billing cycle of which such period is a part unless a statement which includes the amount upon which the finance charge for that period is based was mailed at least fourteen days prior to the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge.

(b) Subsection (a) of this section does not apply in any case where a creditor has been prevented, delayed, or hindered in making timely mailing or delivery of such periodic statement within the time period specified in such subsection because of an act of God, war, natural disaster, strike, or other excusable or justifiable cause, as determined under regulations of the Board.

(Pub. L. 90-321, title I, § 163, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1514.)

§ 1666c. Prompt crediting of payments; imposition of finance charge

Payments received from an obligor under an open end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Board. Such regulations shall prevent a finance charge from being imposed on any obligor if the creditor has received the obligor's payment in readily identifiable form in the amount, manner, location, and time indicated by the creditor to avoid the imposition thereof.

(Pub. L. 90-321, title I, § 164, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1514.)

§ 1666d. Refunding or crediting of excess payments of obligor

Whenever an obligor transmits funds to a creditor in excess of the total balance due on an open end consumer credit account, the creditor shall promptly (1) upon request of the obligor refund the amount of the overpayment, or (2) credit such amount to the obligor's account.

(Pub. L. 90-321, title I, § 165, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1514.)

§ 1666e. Notification of credit card issuer by seller of return of goods, etc., by obligor; credit for account of obligor

With respect to any sales transaction where a credit card has been used to obtain credit, where the seller is a person other than the card issuer, and where the seller accepts or allows a return of the goods or forgiveness of a debit for services which were the subject of such sale, the seller shall promptly transmit to the credit card issuer, a credit statement with respect thereto and the credit card issuer shall credit the account of the obligor for the amount of the transaction.

(Pub. L. 90-321, title I, § 166, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1514.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1610 of this title.

§ 1666f. Inducements to cardholders by sellers of cash discounts for payments by cash, check or similar means; credit card surcharge prohibition; finance charge for sales transactions involving cash discounts

(a)(1) With respect to credit card which may be used for extensions of credit in sales transactions in which the seller is a person other than the card issuer, the card issuer may not, by contract, or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check, or similar means rather than use a credit card.

(2) No seller in any sales transaction may impose a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check, or similar means.

(b) With respect to any sales transaction, any discount not in excess of 5 per centum offered by the seller for the purpose of inducting payment by cash, check, or other means not involving the use of a credit card shall not constitute a finance charge as determined under section 1605 of this title, if such discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with regulations of the Board.

(Pub. L. 90-321, title I, § 167, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1515, and amended Pub. L. 94-222, § 3(c)(1), Feb. 27, 1976, 90 Stat. 197.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-222 designated existing provisions as par. (1) and added par. (2).

TERMINATION DATE OF 1976 AMENDMENT

Section 3(c)(2) of Pub. L. 94-222 provided that: "The amendment made by paragraph (1) [designating existing provisions as par. (1) and adding par. (2) to subsec. (a) of this section] shall cease to be effective upon the expiration of three years after the date of enactment of this Act [Feb. 27, 1976]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602, 1666j of this title.

§ 1666g. Tie-in services prohibited for issuance of credit card

Notwithstanding any agreement to the contrary, a card issuer may not require a seller, as a condition to participating in a credit card plan, to open an account with or procure any other service from the card issuer or its subsidiary or agent.

(Pub. L. 90-321, title I, § 168, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1515.)

§ 1666h. Offset of cardholder's indebtedness by issuer of credit card with funds deposited with issuer by cardholder; remedies of creditors under State law not affected

(a) A card issuer may not take any action to offset a cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer unless—

(1) such action was previously authorized in writing by the cardholder in accordance with a credit plan whereby the cardholder agrees periodically to pay debts incurred in his open end credit account by permitting the card issuer periodically to deduct all or a portion of such debt from the cardholder's deposit account, and

(2) such action with respect to any outstanding disputed amount not be taken by the card issuer upon request of the cardholder.

In the case of any credit card account in existence on the effective date of this section, the previous written authorization referred to in clause (1) shall not be required until the date (after such effective date) when such account is renewed, but in no case later than one year after such effective date. Such written authorization shall be deemed to exist if the card issuer has previously notified the cardholder that the use of his credit card account will subject any funds which the card issuer holds in deposit accounts of such cardholder to offset against any amounts due and payable on his credit card account which have not been paid in accordance with the terms of the agreement between the card issuer and the cardholder.

This section does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally.

(Pub. L. 90-321, title I, § 169, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1515.)

REFERENCES IN TEXT

For effective date of this section, referred to in subsec. (a), see Effective Date note set out under section 1666 of this title.

§ 1666i. Assertion by cardholder against card issuer of claims and defenses arising out of credit card transaction; prerequisites; limitation on amount of claims or defenses

(a) Subject to the limitation contained in subsection (b) of this section, a card issuer who has issued a credit card to a cardholder pursuant to an open end consumer credit plan shall be subject to all claims (other than tort claims) and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if (1) the obligor has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card; (2) the amount of the initial transaction exceeds $50; and (3) the place where the initial transaction occurred was in the same State as the mailing address previously provided by the cardholder or was within 100 miles from such address, except that the limitations set forth in clauses (2) and (3) with respect to an obligor's right to assert claims and defenses against a card issuer shall not be applicable to any transaction in which the person honoring the credit card (A) is the same person as the card issuer, (B) is controlled by the card issuer, (C) is under direct or indirect common control with the card issuer, (D) is a franchised dealer in the card issuer's products or services, or (E) has obtained the order for such transaction through a mail solicitation made by or participated in by the card issuer in which the cardholder is solicited to enter into such transaction by using the credit card issued by the card issuer.

(b) The amount of claims or defenses asserted by the cardholder may not exceed the amount of credit outstanding with respect to such transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of such claim or defense. For the purpose of determining the amount of credit outstanding in the preceding sentence, payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of: (1) late charges in the order of their entry to the account; (2) finance charges in order of their entry to the account; and (3) debits to the account other than those set forth above, in the order in which each debit entry to the account was made.

(Pub. L. 90-321, title I, § 170, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1515.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1637 of this title.

§ 1666j. Applicability of State laws

(a) Consistency of provisions

(a) This part does not annul, alter, or affect, or exempt any person subject to the provisions of this part from complying with, the laws of the State with respect to credit billing practices, except to the extent that those laws are inconsistent with any provision of this part, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this part if the Board determines that such law gives greater protection to the consumer.

(b) Exemptions by Board from credit billing requirements

(b) The Board shall by regulation exempt from the requirements of this part any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this part or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.

(c) Finance charge or other charge for credit for sales transactions involving cash discounts

(c) Notwithstanding any other provisions of this subchapter, any discount offered under section 1666f(b) of this title shall not be considered a finance charge or other charge for credit under the usury laws of any State or under the laws of any State relating to disclosure of information in connection with credit transactions, or relating to the types, amounts or rates of charges, or to any element or elements of charges permissible under such laws in connection with the extension or use of credit.

(Pub. L. 90-321, title I, § 171, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1516, and amended Pub. L. 94-222, § 3(d), Feb. 27, 1976, 90 Stat. 198.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94-222 added subsec. (c).

PART E—CONSUMER LEASES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1640 of this title.

§ 1667. Definitions

For purposes of this part—

(1) The term "consumer lease" means a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding $25,000, primarily for personal, family, or household purposes, whether or

not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any credit sale as defined in section 1602(g) of this title. Such term does not include a lease for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization.

(2) The term "lessee" means a natural person who leases or is offered a consumer lease.

(3) The term "lessor" means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease.

(4) The term "personal property" means any property which is not real property under the laws of the State where situated at the time offered or otherwise made available for lease.

(5) The terms "security" and "security interest" mean any interest in property which secures payment or performance of an obligation.

(Pub. L. 90-321, title I, § 181, as added Pub. L. 94-240, § 3, Mar. 23, 1976, 90 Stat. 257.)

EFFECTIVE DATE

Section 6 of Pub. L. 94-240 provided that: "This Act [which enacted this section and sections 1667a to 1667e of this title, amended sections 1601 and 1640 of this title, and enacted provisions set out as a note under section 1601 of this title] takes effect one year after the date of its enactment [Mar. 23, 1976]."

§ 1667a. Consumer lease disclosures

Each lessor shall give a lessee prior to the consummation of the lease a dated written statement on which the lessor and lessee are identified setting out accurately and in a clear and conspicuous manner the following information with respect to that lease, as applicable:

(1) A brief description or identification of the leased property;

(2) The amount of any payment by the lessee required at the inception of the lease;

(3) The amount paid or payable by the lessee for official fees, registration, certificate of title, or license fees or taxes;

(4) The amount of other charges payable by the lessee not included in the periodic payments, a description of the charges and that the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability;

(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time;

(6) A statement identifying all express warranties and guarantees made by the manufacturer or lessor with respect to the leased property, and identifying the party responsible for maintaining or servicing the leased property together with a description of the responsibility;

(7) A brief description of insurance provided or paid for by the lessor or required of the lessee, including the types and amounts of the coverages and costs;

(8) A description of any security interest held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates;

(9) The number, amount, and due dates or periods of payments under the lease and the total amount of such periodic payments;

(10) Where the lease provides that the lessee shall be liable for the anticipated fair market value of the property on expiration of the lease, the fair market value of the property at the inception of the lease, the aggregate cost of the lease on expiration, and the differential between them; and

(11) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the term and the amount or method of determining any penalty or other charge for delinquency, default, late payments, or early termination.

The disclosures required under this section may be made in the lease contract to be signed by the lessee. The Board may provide by regulation that any portion of the information required to be disclosed under this section may be given in the form of estimates where the lessor is not in a position to know exact information.

(Pub. L. 90-321, title I, § 182, as added Pub. L. 94-240, § 3, Mar. 23, 1976, 90 Stat. 258.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1667d of this title.

§ 1667b. Lessee's liability on expiration or termination of lease

(a) Estimated residual value of property as basis; presumptions; action by lessor for excess liability; mutually agreeable final adjustment

Where the lessee's liability on expiration of a consumer lease is based on the estimated residual value of the property such estimated residual value shall be a reasonable approximation of the anticipated actual fair market value of the property on lease expiration. There shall be a rebuttable presumption that the estimated residual value is unreasonable to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease. In addition, where the lessee has such liability on expiration of a consumer lease there shall be a rebuttable presumption that the lessor's estimated residual value is not in good faith to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease and such lessor shall not collect from the lessee the amount of such excess liability on expiration of a consumer lease unless the lessor brings a successful action with respect to such excess liability. In all actions, the lessor shall pay the lessee's reasonable attorney's fees. The presumptions stated in this section shall not apply to the extent the excess of estimated over actual residual value is due to physical damage to the property beyond reasonable wear and use, or to excessive use, and the lease may set standards for such wear and use if such standards are not unreasonable. Nothing in this subsection shall preclude the right of a willing lessee to make any mutually agreeable final adjustment with respect to such excess residual liability, provided such an agreement is reached after termination of the lease.

(b) Penalties and charges for delinquency, default, or early termination

Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

(c) Independent professional appraisal of residual value of property at termination of lease; finality

If a lease has a residual value provision at the termination of the lease, the lessee may obtain at his expense, a professional appraisal of the leased property by an independent third party agreed to by both parties. Such appraisal shall be final and binding on the parties.

(Pub. L. 90-321, title I, § 183, as added Pub. L. 94-240, § 3, Mar. 23, 1976, 90 Stat. 259.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1667d of this title.

§ 1667c. Consumer lease advertising; liability of advertisers

(a) No advertisement to aid, promote, or assist directly or indirectly any consumer lease shall state the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at inception of the lease unless the advertisement also states clearly and conspicuously and in accordance with regulations issued by the Board each of the following items of information which is applicable:

(1) That the transaction advertised is a lease.

(2) The amount of any payment required at the inception of the lease or that no such payment is required if that is the case.

(3) The number, amounts, due dates or periods of scheduled payments, and the total of payments under the lease.

(4) That the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability.

(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time.

(b) There is no liability under this section on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

(Pub. L. 90-321, title I, § 184, as added Pub. L. 94-240, § 3, Mar. 23, 1976, 90 Stat. 259.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1667d of this title.

§ 1667d. Civil liability of lessors

(a) Grounds for maintenance of action

Any lessor who fails to comply with any requirement imposed under section 1667a or 1667b of this title with respect to any person is liable to such person as provided in section 1640 of this title.

(b) Additional grounds for maintenance of action; definition

Any lessor who fails to comply with any requirement imposed under section 1667c of this title with respect to any person who suffers actual damage from the violation is liable to such person as provided in section 1640 of this title. For the purposes of this section, the term "creditor" as used in sections 1614, 1640, and 1641 of this title shall include a lessor as defined in this part.

(c) Jurisdiction of courts; time limitation

Notwithstanding section 1640(e) of this title, any action under this section may be brought in any United States district court or in any other court of competent jurisdiction. Such actions alleging a failure to disclose or otherwise comply with the requirements of this part shall be brought within one year of the termination of the lease agreement.

(Pub. L. 90-321, title I, § 185, as added Pub. L. 94-240, § 3, Mar. 23, 1976, 90 Stat. 260.)

§ 1667e. Applicability of State laws; exemptions by Board from leasing requirements

(a) This part does not annul, alter, or affect, or exempt any person subject to the provisions of this part from complying with, the laws of any State with respect to consumer leases, except to the extent that those laws are inconsistent with any provision of this part, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this part if the Board determines that such law gives greater protection and benefit to the consumer.

(b) The Board shall by regulation exempt from the requirements of this part any class of lease transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this part or that such law gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement.

(Pub. L. 90-321, title I, § 186, as added Pub. L. 94-240, § 3, Mar. 23, 1976, 90 Stat. 260.)

SUBCHAPTER II—RESTRICTIONS ON GARNISHMENT

§ 1671. Congressional findings and declaration of purpose

(a) The Congress finds:

(1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of

credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.

(2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce.

(3) The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country.

(b) On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of this subchapter are necessary and proper for the purpose of carrying into execution the powers of the Congress to regulate commerce and to establish uniform bankruptcy laws.

(Pub. L. 90-321, title III, § 301, May 29, 1968, 82 Stat. 163.)

REFERENCES IN TEXT

The bankruptcy laws, referred to in subsec. (b), are generally classified to section 1 et seq. of Title 11, Bankruptcy.

EFFECTIVE DATE

Section 504(c) of Pub. L. 90-321 provided that: "Title III [which enacted this section and sections 1672 to 1677 of this title] takes effect on July 1, 1970."

§ 1672. Definitions

For the purposes of this subchapter:

(a) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(c) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

(Pub. L. 90-321, title III, § 302, May 29, 1968, 82 Stat. 163.)

§ 1673. Restriction on garnishment

(a) Maximum allowable garnishment

Except as provided in subsection (b) of this section and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of title 29 in effect at the time the earnings are payable,

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) Exceptions

The restrictions of subsection (a) of this section do not apply in the case of

(1) any order of any court for the support of any person.

(2) any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act [11 U.S.C. 1001 et seq.].

(3) any debt due for any State or Federal tax.

(c) Execution or enforcement of garnishment order or process prohibited

No court of the United States or any State may make, execute, or enforce any order or process in violation of this section.

(Pub. L. 90-321, title III, § 303, May 29, 1968, 82 Stat. 163.)

REFERENCES IN TEXT

Chapter XIII of the Bankruptcy Act, referred to in subsec. (b)(2), is classified to chapter 13 (§ 1001 et seq.) of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1675 of this title.

§ 1674. Restriction on discharge from employment by reason of garnishment

(a) No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

(b) Whoever wilfully violates subsection (a) of this section shall be fined not more than $1,000, or imprisoned not more than one year, or both.

(Pub. L. 90-321, title III, § 304, May 29, 1968, 82 Stat. 163.)

§ 1675. Exemption for State-regulated garnishments

The Secretary of Labor may by regulation exempt from the provisions of section 1673(a) of this title garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in section 1673(a) of this title.

(Pub. L. 90-321, title III, § 305, May 29, 1968, 82 Stat. 164.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1673 of this title.

§ 1676. Enforcement by Secretary of Labor

The Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor, shall enforce the provisions of this subchapter.

(Pub. L. 90-321, title III, § 306, May 29, 1968, 82 Stat. 164.)

§ 1677. Effect on State laws

This subchapter does not annul, alter, or affect, or exempt any person from complying with, the laws of any State

(1) prohibiting garnishments or providing for more limited garnishment than are allowed under this subchapter, or

(2) prohibiting the discharge of any employee by reason of the fact that his earnings have been subjected to garnishment for more than one indebtedness.

(Pub. L. 90-321, title III, § 307, May 29, 1968, 82 Stat. 164.)

SUBCHAPTER III—CREDIT REPORTING AGENCIES

§ 1681. Congressional findings and statement of purpose

(a) The Congress makes the following findings:

(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.

(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

(b) It is the purpose of this subchapter to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter.

(Pub. L. 90-321, title VI, § 602, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1128.)

EFFECTIVE DATE

Section 504(d) of Pub. L. 90-321, as added by Pub. L. 91-508, title VI, § 602, Oct. 26, 1970, 84 Stat. 1136, provided that: "Title VI [enacting this subchapter] takes effect upon the expiration of one hundred and eighty days following the date of its enactment [Oct. 26, 1970]."

SHORT TITLE

This subchapter known as the "Fair Credit Reporting Act", see Short Title note set out under section 1601 of this title.

§ 1681a. Definitions; rules of construction

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

(d) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under section 1681b of this title. The term does not include (A) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under section 1681m of this title.

(e) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(g) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(h) The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(i) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

(Pub. L. 90-321, title VI, § 603, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1128.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 7609.

§ 1681b. Permissible purposes of consumer reports

A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe—

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

(Pub. L. 90-321, title VI, § 604, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1129.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1681a, 1681e, 1681f of this title.

§ 1681c. Reporting of obsolete information prohibited

(a) Except as authorized under subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) Bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen years.

(2) Suits and judgments which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

(5) Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years.

(6) Any other adverse item of information which antedates the report by more than seven years.

(b) The provisions of subsection (a) of this section are not applicable in the case of any consumer credit report to be used in connection with—

(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of $50,000 or more;

(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of $50,000 or more; or

(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal $20,000, or more.

(Pub. L. 90-321, title VI, § 605, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1129.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1681e of this title.

§ 1681d. Disclosure of investigative consumer reports

(a) Disclosure of fact of preparation

A person may not procure or cause to be prepared an investigative consumer report on any consumer unless—

(1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure (A) is made in a writing mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested, and (B) includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section; or

(2) the report is to be used for employment purposes for which the consumer has not specifically applied.

(b) Disclosure on request of nature and scope of investigation

Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a)(1) of this section, shall[1] make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

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[1] So in original. Probably should be omitted.

(c) Limitation on liability upon showing of reasonable procedures for compliance with provisions

No person may be held liable for any violation of subsection (a) or (b) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (a) or (b) of this section.

(Pub. L. 90-321, title VI, § 606, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1130.)

§ 1681e. Compliance procedures

(a) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of section 1681c of this title and to limit the furnishing of consumer reports to the purposes listed under section 1681b of this title. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 1681b of this title.

(b) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

(Pub. L. 90-321, title VI, § 607, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1130.)

§ 1681f. Disclosures to governmental agencies

Notwithstanding the provisions of section 1681b of this title, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

(Pub. L. 90-321, title VI, § 608, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1131.)

§ 1681g. Disclosures to consumers

(a) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(1) The nature and substance of all information (except medical information) in its files on the consumer at the time of the request.

(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: *Provided*, That in the event an action is brought under this subchapter, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

(3) The recipients of any consumer report on the consumer which it has furnished—

(A) for employment purposes within the two-year period preceding the request, and

(B) for any other purpose within the six-month period preceding the request.

(b) The requirements of subsection (a) of this section respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this subchapter except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

(Pub. L. 90-321, title VI, § 609, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1131.)

REFERENCES IN TEXT

For the effective date of this subchapter, referred to in subsec. (b), see section 504(d) of Pub. L. 90-321, set out as an Effective Date note under section 1681 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1681h, 1681j of this title.

§ 1681h. Conditions of disclosure to consumers

(a) Times and notice

A consumer reporting agency shall make the disclosures required under section 1681g of this title during normal business hours and on reasonable notice.

(b) Identification of consumer

The disclosures required under section 1681g of this title shall be made to the consumer—

(1) in person if he appears in person and furnishes proper identification; or

(2) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(c) Trained personnel

Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section 1681g of this title.

(d) Persons accompanying consumer

The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

(e) Limitation of liability

Except as provided in sections 1681n and 1681o of this title, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 1681g, 1681h, or 1681m of this title, except as to false information furnished with malice or willful intent to injure such consumer.

(Pub. L. 90-321, title VI, § 610, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1131.)

§ 1681i. Procedure in case of disputed accuracy

(a) Dispute; reinvestigation

If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete such information. The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(b) Statement of dispute

If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

(c) Notification of consumer dispute in subsequent consumer reports

Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.

(d) Notification of deletion of disputed information

Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) of this section to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information. The consumer reporting agency shall clearly and conspicuously disclose to the consumer his rights to make such a request. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received.

(Pub. L. 90-321, title VI, § 611, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1132.)

Section Referred to in Other Sections

This section is referred to in section 1681j of this title.

§ 1681j. Charges for disclosures

A consumer reporting agency shall make all disclosures pursuant to section 1681g of this title and furnish all consumer reports pursuant to section 1681i(d) of this title without charge to the consumer if, within thirty days after receipt by such consumer of a notification pursuant to section 1681m of this title or notification from a debt collection agency affiliated with such consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 1681g or 1681i(d) of this title. Otherwise, the consumer reporting agency may impose a reasonable charge on the consumer for making disclosure to such consumer pursuant to section 1681g of this title, the charge for which shall be indicated to the consumer prior to making disclosure; and for furnishing notifications, statements, summaries, or codifications to person designated by the consumer pursuant to section 1681i(d) of this title, the charge for which shall be indicated to the consumer prior to furnishing such information and shall not exceed the charge that the consumer reporting agency would impose on each designated recipient for a consumer report except that no charge may be made for notifying such persons of the deletion of information which is found to be inaccurate or which can no longer be verified.

(Pub. L. 90-321, title VI, § 612, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1132.)

§ 1681k. Public record information for employment purposes

A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall—

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

(Pub. L. 90-321, title VI, § 613, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1133.)

§ 1681*l*. Restrictions on investigative consumer reports

Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished.

(Pub. L. 90-321, title VI, § 614, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1133.)

§ 1681m. Requirements on users of consumer reports

(a) Adverse action based on reports of consumer reporting agencies

Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(b) Adverse action based on reports of persons other than consumer reporting agencies

Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(c) Reasonable procedures to assure compliance

No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (a) and (b) of this section.

(Pub. L. 90-321, title VI, § 615, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1133.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1681a, 1681h, 1681j of this title.

§ 1681n. Civil liability for willful noncompliance

Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(Pub. L. 90-321, title VI, § 616, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1681h of this title.

§ 1681*o*. Civil liability for negligent noncompliance

Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure;

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(Pub. L. 90-321, title VI, § 617, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1681h of this title.

§ 1681p. Jurisdiction of courts; limitation of actions

An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this subchapter to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this subchapter, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

(Pub. L. 90-321, title VI, § 618, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.)

§ 1681q. Obtaining information under false pretenses

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(Pub. L. 90-321, title VI, § 619, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.)

§ 1681r. Unauthorized disclosures by officers or employees

Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(Pub. L. 90-321, title VI, § 620, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.)

§ 1681s. Administrative enforcement

(a) Federal Trade Commission; powers

Compliance with the requirements imposed under this subchapter shall be enforced under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this subchapter shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act [15 U.S.C. 45(a)] and shall be subject to enforcement by the Federal Trade Commission under section 5(b) thereof [15 U.S.C. 45(b)] with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this subchapter and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act were part of this subchapter. Any person violating any of the provisions of this subchapter shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this subchapter.

(b) Other administrative bodies

Compliance with the requirements imposed under this subchapter with respect to consumer reporting agencies and persons who use consumer reports from such agencies shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], in the case of:

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.

(2) section 5(d) of the Home Owners Loan Act of 1933 [12 U.S.C. 1464(d)], section 407 of the National Housing Act [12 U.S.C. 1730], and sections 6(i) and 17 of the Federal Home Loan Bank Act [12 U.S.C. 1426(i) and 1437], by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(4) the Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts;

(5) the Federal Aviation Act of 1958 [49 U.S.C. 1301 et seq.], by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act; and

(6) the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.] (except as provided in section 406 of that Act [7 U.S.C. 226, 227]), by the Secretary of Agriculture with respect to any activities subject to that Act.

(c) Enforcement under other authority

For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter any other authority conferred on it by law.

(Pub. L. 90-321, title VI, § 621, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1134.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

The Federal Credit Union Act, referred to in subsec. (b)(3), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§ 1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables volume.

The Acts to regulate commerce, referred to in subsec. (b)(4), are known as the Interstate Commerce

Act (act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended), which is classified generally to chapters 1 (§ 1 et seq.), 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (§ 1231 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of Title 49 and Tables volume.

The Federal Aviation Act of 1958, referred to in subsec. (b)(5), is Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 737, which is classified generally to chapter 20 (§ 1301 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 49 and Tables volume.

The Packers and Stockyards Act, 1921, referred to in subsec. (b)(6), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, which is classified to chapter 9 (§ 181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables volume.

§ 1681t. Relation to State laws

This subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

(Pub. L. 90-321, title VI, § 622, as added Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1136.)

SUBCHAPTER IV—EQUAL CREDIT OPPORTUNITY

§ 1691. Scope of prohibition

(a) Activities constituting discrimination

It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction—

(1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);

(2) because all or part of the applicant's income derives from any public assistance program; or

(3) because the applicant has in good faith exercised any right under this chapter.

(b) Activities not constituting discrimination

It shall not constitute discrimination for purposes of this subchapter for a creditor—

(1) to make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of credit-worthiness;

(2) to make an inquiry of the applicant's age or of whether the applicant's income derives from any public assistance program if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of credit-worthiness as provided in regulations of the Board;

(3) to use any empirically derived credit system which considers age if such system is demonstrably and statistically sound in accordance with regulations of the Board, except that in the operation of such system the age of an elderly applicant may not be assigned a negative factor or value; or

(4) to make an inquiry or to consider the age of an elderly applicant when the age of such applicant is to be used by the creditor in the extension of credit in favor of such applicant.

(c) Additional activities not constituting discrimination

It is not a violation of this section for a creditor to refuse to extend credit offered pursuant to—

(1) any credit assistance program expressly authorized by law for an economically disadvantaged class of persons;

(2) any credit assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons; or

(3) any special purpose credit program offered by a profit-making organization to meet special social needs which meets standards prescribed in regulations by the Board;

if such refusal is required by or made pursuant to such program.

(d) Reason for adverse action; procedure applicable; definition

(1) Within thirty days (or such longer reasonable time as specified in regulations of the Board for any class of credit transaction) after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.

(2) Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by—

(A) providing statements of reasons in writing as a matter of course to applicants against whom adverse action is taken; or

(B) giving written notification of adverse action which discloses (i) the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made within sixty days after such notification, and (ii) the identity of the person or office from which such statement may be obtained. Such statement may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

(3) A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken.

(4) Where a creditor has been requested by a third party to make a specific extension of credit directly or indirectly to an applicant, the notification and statement of reasons required by this subsection may be made directly by such creditor, or indirectly through the third party, provided in either case that the identity of the creditor is disclosed.

(5) The requirements of paragraph (2), (3), or (4) may be satisfied by verbal statements or notifications in the case of any creditor who did not act on more than one hundred and fifty applications during the calendar year preceding the calendar year in which the adverse action is taken, as determined under regulations of the Board.

(6) For purposes of this subsection, the term "adverse action" means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. Such term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.

(Pub. L. 90-321, title VII, § 701, as added Pub. L. 93-495, title V, § 503, Oct. 28, 1974, 88 Stat. 1521, and amended Pub. L. 94-239, § 2, Mar. 23, 1976, 90 Stat. 251.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-239 designated existing provisions as cl. (1), and, as so designated, expanded prohibition against discrimination to include race, color, religion, national origin and age, and added cls. (2) and (3).

Subsec. (b). Pub. L. 94-239 designated existing provisions as cl. (1) and added cls. (2) to (4).

Subsecs. (c), (d). Pub. L. 94-239 added subsecs. (c) and (d).

EFFECTIVE DATE

Section 708, formerly 707, of Pub. L. 90-321, as added by Pub. L. 93-495, Title V, § 503, Oct. 28, 1974, 88 Stat. 1525, renumbered and amended by Pub. L. 94-239, §§ 7, 8, Mar. 23, 1976, 90 Stat. 255, provided that: "This title [enacting this subchapter and provisions set out as notes under this section] takes effect upon the expiration of one year after the date of its enactment [Oct. 28, 1974]. The amendments made by the Equal Credit Opportunity Act Amendments of 1976 [enacting section 1691f of this title, amending this section and sections 1691b, 1691c, 1691d, 1691e of this title, repealing section 1609 of this title, enacting provisions set out as notes under this section and repealing provisions set out as a note under this section] shall take effect on the date of enactment thereof [Mar. 23, 1976] and shall apply to any violation occurring on or after such date, except that the amendments made to section 701 of the Equal Credit Opportunity Act [this section] shall take effect 12 months after the date of enactment [Mar. 23, 1976]."

SHORT TITLE

This subchapter known as the "Equal Credit Opportunity Act", see Short Title note set out under section 1601 of this title.

CONGRESSIONAL FINDINGS AND STATEMENT OF PURPOSE

Section 502 of Pub. L. 93-495 provided that: "The Congress finds that there is a need to insure that the various financial institutions and other firms engaged in the extensions of credit exercise their responsibility to make credit available with fairness, impartiality, and without discrimination on the basis of sex or marital status. Economic stabilization would be enhanced and competition among the various financial institutions and other firms engaged in the extension of credit would be strengthened by an absence of discrimination on the basis of sex or marital status, as well as by the informed use of credit which Congress has heretofore sought to promote. It is the purpose of this Act [see Short Title note set out under section 1601 of this title] to require that financial institutions and other firms engaged in the extension of credit make that credit equally available to all credit-worthy customers without regard to sex or marital status."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1691d, 1691e of this title.

§ 1691a. Definitions; rules of construction

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term "applicant" means any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.

(c) The term "Board" refers to the Board of Governors of the Federal Reserve System.

(d) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.

(e) The term "creditor" means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.

(f) The term "person" means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(g) Any reference to any requirement imposed under this subchapter or any provision thereof includes reference to the regulations of the Board under this subchapter or the provision thereof in question.

(Pub. L. 90-321, title VII, § 702, as added Pub. L. 93-495, title V, § 503, Oct. 28, 1974, 88 Stat. 1522.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1691d of this title.

§ 1691b. Promulgation of regulations by Board; establishment of Consumer Advisory Council by Board; duties, membership, etc., of Council

(a) The Board shall prescribe regulations to carry out the purposes of this subchapter. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith. In particular, such regulations may exempt from one or more of the provisions of this subchapter any class of transactions not primarily for personal, family, or household purposes, if the Board makes an express finding that the application of such provision or provisions would not contribute substantially to carrying out the purposes of this subchapter. Such regulations shall be prescribed as soon as possible after the date of enactment of this Act, but in no event later than the effective date of this Act.

(b) The Board shall establish a Consumer Advisory Council to advise and consult with it in the exercise of its functions under this chapter and to advise and consult with it concerning other consumer related matters it may place before the Council. In appointing the members of the Council, the Board shall seek to achieve a fair representation of the interests of creditors and consumers. The Council shall meet from time to time at the call of the Board. Members of the Council who are not regular full-time employees of the United States shall, while attending meetings of such Council, be entitled to receive compensation at a rate fixed by the Board, but not exceeding $100 per day, including travel time. Such members may be allowed travel expenses, including transportation and subsistence, while away from their homes or regular place of business.

(Pub. L. 90-321, title VII, § 703, as added Pub. L. 93-495, title V, § 503, Oct. 28, 1974, 88 Stat. 1522, and amended Pub. L. 94-239, § 3(a), Mar. 23, 1976, 90 Stat. 252.)

References in Text

"This Act", referred to in subsec. (a), probably was intended to mean the "Equal Credit Opportunity Act", which is set out as this subchapter, and not the "Consumer Credit Protection Act", which is set out as this chapter. Therefore, "the date of enactment of this Act", referred to in text, would be Oct. 28, 1974, and "the effective date of this Act", also referred to in text, would have occurred upon the expiration of 1 year after Oct. 28, 1974.

Amendments

1976—Subsec. (a). Pub. L. 94-239, § 3(a)(1), (2), designated existing provisions as subsec. (a) and, as so designated, added provisions exempting from regulations of this subchapter any class of transactions not primarily for personal, family, or household purposes to be determined by the Board.

Subsec. (b). Pub. L. 94-239, § 3(a)(3), added subsec. (b).

Effective Date of 1976 Amendment

Amendment by Pub. L. 94-239 effective on Mar. 23, 1976, see section 708 of Pub. L. 94-239, set out as a note under section 1691 of this title.

§ 1691c. Administrative enforcement

(a) Enforcing agencies

Compliance with the requirements imposed under this subchapter shall be enforced under:

(1) Section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], in the case of—

(A) national banks, by the Comptroller of the Currency,

(B) member banks of the Federal Reserve System (other than national banks), by the Board,

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.

(2) Section 5(d) of the Home Owners' Loan Act of 1933 [12 U.S.C. 1464(d)], section 407 of the National Housing Act [12 U.S.C. 1730], and sections 6(i) and 17 of the Federal Home Loan Bank Act [12 U.S.C. 1426(i) and 1437], by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions.

(3) The Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal Credit Union.

(4) The Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts.

(5) The Federal Aviation Act of 1958 [49 U.S.C. 1301 et seq.], by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act.

(6) The Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.] (except as provided in section 406 of that Act [7 U.S.C. 226, 227]), by the Secretary of Agriculture with respect to any activities subject to that Act.

(7) The Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.], by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, and production credit association;

(8) The Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by the Securities and Exchange Commission with respect to brokers and dealers; and

(9) The Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.], by the Small Business Administration, with respect to small business investment companies.

(b) Violations of subchapter deemed violations of preexisting statutory requirements; additional agency powers

For the purpose of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in that subsection may exercise for the purpose of enforcing compliance with any requirement imposed under this subchapter, any other authority conferred on it by law. The exercise of the authorities of any of the agencies referred to in subsection (a) of this section for the purpose of enforcing compliance with any requirement imposed under this subchapter shall in no way preclude the exercise of such authorities for the purpose of enforcing compliance with any other provision of law not relating to the prohibition of discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction.

(c) Overall enforcement authority of Federal Trade Commission

Except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under subsection (a) of this section, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce any Federal Reserve Board regulation promulgated under this subchapter in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(d) Rules and regulations by enforcing agencies

The authority of the Board to issue regulations under this subchapter does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this subchapter.

(Pub. L. 90-321, title VII, § 704, as added Pub. L. 93-495, title V, § 503, Oct. 28, 1974, 88 Stat. 1522, and amended Pub. L. 94-239, § 4, Mar. 23, 1976, 90 Stat. 253.)

REFERENCES IN TEXT

The Federal Credit Union Act, referred to in subsec. (a)(3), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§ 1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables volume.

The Acts to regulate commerce, referred to in subsec. (a)(4), are known as the Interstate Commerce Act (act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended), which is classified generally to chapters 1 (§ 1 et seq.), 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (§ 1231 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of Title 49 and Tables volume.

The Federal Aviation Act of 1958, referred to in subsec. (a)(5), is Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 737, which is classified generally to chapter 20 (§ 1301 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 49 and Tables volume.

The Packers and Stockyards Act, 1921, referred to in subsec. (a)(6), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, which is classified to chapter 9 (§ 181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables volume.

The Farm Credit Act of 1971, referred to in subsec. (a)(7), is Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 585, which is classified generally to chapter 23 (§ 2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables Volume.

The Securities Exchange Act of 1934, referred to in subsec. (a)(8), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see Codification note set out under section 78a of this title and Tables volume.

The Small Business Investment Act of 1958, referred to in subsec. (a)(9), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§ 661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables volume.

The Federal Trade Commission Act, referred to in subsec. (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

AMENDMENTS

1976—Subsec. (c). Pub. L. 94-239 added provisions giving the Federal Trade Commission power to enforce any regulation of the Federal Reserve Board promulgated under this subchapter.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-239 effective Mar. 23, 1976, see section 708 of Pub. L. 90-321, set out as a note under section 1691 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1691e, 1691f of this title.

§ 1691d. Applicability of other laws

(a) Requests for signature of husband and wife for creation of valid lien, etc.

A request for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or assigning earnings, shall not constitute discrimination under this subchapter: *Provided, however,* That this provision shall not be construed to permit a creditor to take sex or marital status into account in connection with the evaluation of creditworthiness of any applicant.

(b) State property laws affecting creditworthiness

Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this subchapter.

(c) State laws prohibiting separate extension of consumer credit to husband and wife

Any provision of State law which prohibits the separate extension of consumer credit to each party to a marriage shall not apply in any case where each party to a marriage voluntarily applies for separate credit from the same creditor: *Provided,* That in any case where such a State law is so preempted, each party to the marriage shall be solely responsible for the debt so contracted.

(d) Combining credit accounts of husband and wife with same creditor to determine permissible finance charges or loan ceilings under Federal or State laws

When each party to a marriage separately and voluntarily applies for and obtains separate credit accounts with the same creditor, those accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceilings under the laws of any State or of the United States.

(e) Election of remedies under subchapter or State law; nature of relief determining applicability

Where the same act or omission constitutes a violation of this subchapter and of applicable State law, a person aggrieved by such conduct may bring a legal action to recover monetary damages either under this subchapter or under such State law, but not both. This election of remedies shall not apply to court actions in which the relief sought does not include monetary damages or to administrative actions.

(f) Compliance with inconsistent State laws; determination of inconsistency

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with, the laws of any State with respect to credit discrimination, except to the extent that those laws are inconsistent with any provision of this subchapter and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this subchapter if the Board determines that such law gives greater protection to the applicant.

(g) Exemption by regulation of credit transactions covered by State law; failure to comply with State law

The Board shall by regulation exempt from the requirements of sections 1691 and 1691a of this title any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this subchapter or that such law gives greater protection to the applicant, and that there is adequate provision for enforcement. Failure to comply with any requirement of such State law in any transaction so exempted shall constitute a violation of this subchapter for the purposes of section 1691e of this title.

(Pub. L. 90-321, title VII, § 705, as added Pub. L. 93-495, title V, § 503, Oct. 28, 1974, 88 Stat. 1523, and amended Pub. L. 94-239, § 5, Mar. 23, 1976, 90 Stat. 253.)

AMENDMENTS

1976—Subsec. (e). Pub. L. 94-239, § 5(1), substituted provisions requiring an election of remedies in legal actions involving the recovery of monetary damages, for provisions specifying a general election of remedies.

Subsecs. (f), (g). Pub. L. 94-239, § 5(2), added subsecs. (f) and (g).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-239 effective Mar. 23, 1976, see section 708 of Pub. L. 90-321, set out as a note under section 1691 of this title.

§ 1691e. Civil liability

(a) Individual or class action for actual damages

Any creditor who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class.

(b) Recovery of punitive damages in individual and class action for actual damages; exemptions; maximum amount of punitive damages in individual actions; limitation on total recovery in class actions; factors determining amount of award

Any creditor, other than a government or governmental subdivision or agency, who fails to comply with any requirement imposed under this subchapter shall be liable to the aggrieved applicant for punitive damages in an amount not greater than $10,000, in addition to any actual damages provided in subsection (a) of this section, except that in the case of a class action the total recovery under this subsection shall not exceed the lesser of $500,000 or 1 per centum of the net worth of the creditor. In determining the amount of such damages in any action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(c) Action for equitable and declaratory relief

Upon application by an aggrieved applicant, the appropriate United States district court or any other court of competent jurisdiction may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under this subchapter.

(d) Recovery of costs and attorney fees

In the case of any successful action under subsection (a), (b), or (c) of this section, the costs of the action, together with a reasonable attorney's fee as determined by the court, shall be added to any damages awarded by the court under such subsection.

(e) Good faith compliance with rule, regulation, or interpretation of Board or interpretation or approval by an official or employee of Federal Reserve System duly authorized by Board

No provision of this subchapter imposing liability shall apply to any act done or omitted in good faith in conformity with any official rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(f) Jurisdiction of courts; time for maintenance of action; exceptions

Any action under this section may be brought in the appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction. No such action shall be brought later than two years from the date of the occurrence of the violation, except that—

(1) whenever any agency having responsibility for administrative enforcement under section 1691c of this title commences an enforcement proceeding within two years from the date of the occurrence of the violation,

(2) whenever the Attorney General commences a civil action under this section within two years from the date of the occurrence of the violation,

then any applicant who has been a victim of the discrimination which is the subject of such proceeding or civil action may bring an action under this section not later than one year after the commencement of that proceeding or action.

(g) Request by responsible enforcement agency to Attorney General for civil action

The agencies having responsibility for administrative enforcement under section 1691c of this title, if unable to obtain compliance with section 1691 of this title, are authorized to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted.

(h) Authority for Attorney General to bring civil action; jurisdiction

When a matter is referred to the Attorney General pursuant to subsection (g) of this section, or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this subchapter, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(i) Recovery under both subchapter and fair housing enforcement provisions prohibited for violation based on same transaction

No person aggrieved by a violation of this subchapter and by a violation of section 3605 of title 42 shall recover under this subchapter and section 3612 of title 42, if such violation is based on the same transaction.

(j) Discovery of creditor's granting standards

Nothing in this subchapter shall be construed to prohibit the discovery of a creditor's credit granting standards under appropriate discovery procedures in the court or agency in which an action or proceeding is brought.

(Pub. L. 90-321, title VII, § 706, as added Pub. L. 93-495, title V, § 503, Oct. 28, 1974, 88 Stat. 1524, and amended Pub. L. 94-239, § 6, Mar. 23, 1976, 90 Stat. 253.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-239 substituted reference to member for reference to representative.

Subsec. (b). Pub. L. 94-239 added provisions exempting government or governmental subdivision or agency from requirements of this subchapter, incorporated provisions contained in former subsec. (c) relating to recovery in class actions and, as incorporated, raised the total amount of recovery under a class action from $100,000 to $500,000.

Subsec. (c). Pub. L. 94-239 redesignated former subsec. (d) as (c) and, as so redesignated, specified United States district court or other court of competent jurisdiction as court in which to bring action, and substituted provisions authorizing such court to grant equitable and declaratory relief, for provisions authorizing civil actions for preventive relief. Provisions of former subsec. (c) were incorporated into present subsec. (b) and amended.

Subsec. (d). Pub. L. 94-239 redesignated former subsec. (e) as (d) and, as so redesignated, made minor changes in phraseology. Former subsec. (d) redesignated (c) and amended.

Subsec. (e). Pub. L. 94-239 redesignated former subsec. (f) as (e) and, as redesignated, added reference to officially promulgated rule, regulation, or interpretation and provisions relating to approval and interpretations by an official or employee of the Federal Reserve System duly authorized by the Board. Former subsec. (e) redesignated (d) and amended.

Subsec. (f). Pub. L. 94-239 redesignated former subsec. (g) as (f) and, as so redesignated, added provisions which substituted a two year limitation for one year limitation and provisions extending time in which to bring action under enumerated conditions. Former subsec. (f) redesignated (e) and amended.

Subsec. (g). Pub. L. 94-239 added subsec. (g). Former subsec. (g) redesignated (f) and amended.

Subsecs. (h) to (j). Pub. L. 94-239 added subsecs. (h) to (j).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-239 effective Mar. 23, 1976, see section 708 of Pub. L. 90-321, set out as a note under section 1691 of this title.

§ 1691f. Annual reports to Congress; contents

Not later than February 1 of each year after 1976, the Board and the Attorney General shall, respectively, make reports to the Congress concerning the administration of their functions under this subchapter, including such recommendations as the Board and the Attorney General, respectively, deem necessary or appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with the requirements of this subchapter is being achieved, and a summary of the enforcement actions taken by each of the agencies assigned administrative enforcement responsibilities under section 1691c of this title.

(Pub. L. 90-321, title VII, § 707, as added Pub. L. 94-239, § 7, Mar. 23, 1976, 90 Stat. 255.)

EFFECTIVE DATE

Section effective Mar. 23, 1976, see section 708 of Pub. L. 90-321, set out as a note under section 1691 of this title.

CHAPTER 42—INTERSTATE LAND SALES

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§ 1701. Definitions

For the purposes of this chapter, the term—

(1) "Secretary" means the Secretary of Housing and Urban Development;

(2) "person" means an individual, or an unincorporated organization, partnership, association, corporation, trust, or estate;

(3) "subdivision" means any land, located in any State or in a foreign country, which is divided or proposed to be divided into fifty or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan and where subdivided land is offered for sale or lease by a single developer, or a group of developers acting in concert, and such land is contiguous or is known, designated, or advertised as a common unit or by a common name such land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan;

(4) "developer" means any person who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots in a subdivision;

(5) "agent" means any person who represents, or acts for or on behalf of, a developer in selling or leasing, or offering to sell or lease, any lot or lots in a subdivision; but shall not include an attorney at law whose representation of another person consists solely of rendering legal services;

(6) "blanket encumbrance" means a trust deed, mortgage, judgment, or any other lien or encumbrance, including an option or contract to sell or a trust agreement, affecting a subdivision or affecting more than one lot offered within a subdivision except that such term shall not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority;

(7) "interstate commerce" means trade or commerce among the several States or between any foreign country and any State;

(8) "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

(9) "purchaser" means an actual or prospective purchaser or lessee of any lot in a subdivision;

(10) "offer" includes any inducement, solicitation, or attempt to encourage a person to acquire a lot in a subdivision.

(Pub. L. 90–448, title XIV, § 1402, Aug. 1, 1968, 82 Stat. 590; Pub. L. 93–383, title VIII, § 812(a), Aug. 22, 1974, 88 Stat. 736.)

AMENDMENTS

1974—Par. (3). Pub. L. 93–383, § 812(a)(1), added ", located in any State or in a foreign country" following "any land".

Par. (7). Pub. L. 93–383, § 812(a)(2), added "or between any foreign country and any State" following "States".

EFFECTIVE DATE

Section 1422 of Pub. L. 90–448 provided that: "This title [enacting this chapter] shall take effect upon the expiration of two hundred and seventy days after the date of its enactment [Aug. 1, 1968]."

SHORT TITLE

Section 1401 of Pub. L. 90–448 provided that: "This title [enacting this chapter] may be cited as the 'Interstate Land Sales Full Disclosure Act'."

§ 1702. Exemptions

(a) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to—

(1) the sale or lease of real estate not pursuant to a common promotional plan to offer or sell fifty or more lots in a subdivision;

(2) the sale or lease of lots in a subdivision, all of which are five acres or more in size;

(3) the sale or lease of any improved land on which there is a residential, commercial, or industrial building, or to the sale or lease of land under a contract obligating the seller to erect such a building thereon within a period of two years;

(4) the sale or lease of real estate under or pursuant to court order;

(5) the sale of evidences of indebtedness secured by a mortgage or deed of trust on real estate;

(6) the sale of securities issued by a real estate investment trust;

(7) the sale or lease of real estate by any government or government agency;

(8) the sale or lease of cemetery lots;

(9) the sale or lease of lots to any person who acquire such lots for the purpose of engaging in the business of constructing residential, commercial, or industrial buildings or for the purpose of resale or lease of such lots to persons engaged in such business;

(10) the sale or lease of real estate which is free and clear of all liens, encumbrances, and adverse claims if each and every purchaser or his or her spouse has made a personal on-the-lot inspection of the real estate which he purchased and if the developer executes a written affirmation to that effect to be made a matter of record in accordance with rules and regulations of the Secretary. As used in this subparagraph, the terms "liens", "encumbrances", and "adverse claims" do not refer to property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, nor to taxes and assessments imposed by a State, by any other public body having authority to assess and tax property, or by a property owners' association, which, under applicable State or local law, constitute liens on the property before they are due and payable, nor to beneficial property restrictions which would be enforceable by other lot owners or lessees in the subdivision, if (A) the developer, prior to the time the contract of sale or lease is entered into, has furnished each purchaser or lessee with a statement, the form and content of which has been approved by the Secretary, setting forth in descriptive and concise terms all such reservations, taxes, assessments, and restrictions which are applicable to the lot to be purchased or leased, and (B) receipt of such statement has been acknowledged in writing by the purchaser or lessee, and a copy of the acknowledged statement is filed with the Secretary in accordance with such rules and regulations as he may require; or

(11) the sale or lease of real estate which is zoned by the appropriate governmental authority for industrial or commercial development, when—

(A) local authorities have approved access from such real estate to a public street or highway;

(B) the purchaser or lessee of such real estate is a duly organized corporation, partnership, trust, or business entity engaged in commercial or industrial business;

(C) the purchaser or lessee of such real estate is represented in the transaction of sale or lease by a representative of its own selection;

(D) the purchaser or lessee of such real estate affirms in writing to the seller that it either (i) is purchasing or leasing such real estate substantially for its own use or (ii) has a binding commitment to sell, lease, or sublease such real estate to an entity which meets the requirements of subparagraph (B), is engaged in commercial or industrial business, and is not affiliated with the seller or agent; and

(E) a policy of title insurance or title opinion is issued in connection with the transaction showing that title to the real estate purchased or leased is vested in the seller or lessor, subject only to such exceptions as may be approved in writing by such purchaser or the lessee prior to recordation of the instrument of conveyance or execution of the lease, but (i) nothing herein shall be construed as requiring the recordation of a lease, and (ii) any purchaser or lessee may waive, in writing in a separate document, the requirement of this subparagraph that a policy of title insurance or title opinion be issued in connection with the transaction.

(b) The Secretary may from time to time, pursuant to rules and regulations issued by him, exempt from any of the provisions of this chapter any subdivision or any lots in a subdivision, if he finds that the enforcement of this chapter with respect to such subdivision or lots is not necessary in the public interest and for the protection of purchasers by reason of the small amount involved or the limited character of the public offering.

(Pub. L. 90-448, title XIV, § 1403, Aug. 1, 1968, 82 Stat. 590; Pub. L. 91-152, title IV, § 411, Dec. 24, 1969, 83 Stat. 398; Pub. L. 93-383, title VIII, § 812(b), Aug. 22, 1974, 88 Stat. 736.)

AMENDMENTS

1974—Subsec. (a)(11). Pub. L. 93-383 added subsec. (a)(11).

1969—Subsec. (a)(10). Pub. L. 91-152 substituted provisions requiring a personal on-the-lot inspection of the real estate for provisions requiring a personal inspection of the lot and restricted the definition of the terms "liens", "encumbrances", and "adverse claims" so as not to include taxes and assessments imposed by a State, a public body having authority to assess and tax property, or a property owners' association, which, under the applicable law, constitute liens before they are due and payable, and so as not to include beneficial property restrictions enforceable by other lot owners or lessees in the subdivision under the specified conditions.

§ 1703. Prohibitions relating to sale or lease of lots in subdivisions; voidability of contracts or agreements

(a) It shall be unlawful for any developer or agent, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce, or of the mails—

(1) to sell or lease any lot in any subdivision unless a statement of record with respect to such lot is in effect in accordance with section 1706 of this title and a printed property report, meeting the requirements of section 1707 of this title, is furnished to the purchaser in advance of the signing of any contract or agreement for sale or lease by the purchaser; and

(2) in selling or leasing, or offering to sell or lease, any lot in a subdivision—

(A) to employ any device, scheme, or artifice to defraud, or

(B) to obtain money or property by means of a material misrepresentation with respect to any information included in the statement of record or the property report or with respect to any other information pertinent to the lot or the subdivision and upon which the purchaser relies, or

(C) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser.

(b) Any contract or agreement for the purchase or leasing of a lot in a subdivision covered by this chapter, where the property report has not been given to the purchaser in advance or at the time of his signing, shall be voidable at the option of the purchaser. A purchaser may revoke such contract or agreement until midnight of the third business day following the consummation of the transaction, where he has received the property report less than forty-eight hours before he signed the contract or agreement, and the contract or agreement shall so provide.

(Pub. L. 90-448, title XIV, § 1404, Aug. 1, 1968, 82 Stat. 591; Pub. L. 93-383, title VIII, § 812(c)(1), Aug. 22, 1974, 88 Stat. 737.)

AMENDMENTS

1974—Subsec. (b). Pub. L. 383 substituted "until midnight of the third business day following the consummation of the transaction" for "within forty-eight hours" and struck out provisions relating to exceptions of contracts or agreements stipulating to the nonapplicability of the revocation authority to certain purchasers.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 812(c)(2) of Pub. L. 93-383 provided that: "The amendments made by paragraph (1) [amending subsec. (b) of this section] shall be effective sixty days after the date of the enactment of this Act [Aug. 22, 1974]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1709 of this title.

§ 1704. Registration of subdivisions

(a) Filing of statement of record

A subdivision may be registered by filing with the Secretary a statement of record, meeting the requirements of this chapter and such rules and regulations as may be prescribed by the Secretary in furtherance of the provisions of this chapter. A statement of record shall be deemed effective only as to the lots specified therein.

(b) Payment of fees; use by Secretary

At the time of filing a statement of record, or any amendment thereto, the developer shall pay to the Secretary a fee, not in excess of $1,000, in accordance with a schedule to be fixed by the regulations of the Secretary, which fees may be used by the Secretary to cover all or part of the cost of rendering services under this chapter, and such expenses as are paid from such fees shall be considered nonadministrative.

(c) Filing deemed to have taken place upon receipt of statement of record accompanied by fee

The filing with the Secretary of a statement of record, or of an amendment thereto, shall be deemed to have taken place upon the receipt thereof, accompanied by payment of the fee required by subsection (b) of this section.

(d) Availability of information to public

The information contained in or filed with any statement of record shall be made available to the public under such regulations as the Secretary may prescribe and copies thereof shall be furnished to every applicant at such reasonable charge as the Secretary may prescribe.

(Pub. L. 90-448, title XIV, § 1405, Aug. 1, 1968, 82 Stat. 592.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1708 of this title.

§ 1705. Information required in statement of record

The statement of record shall contain the information and be accompanied by the documents specified hereinafter in this section—

(1) the name and address of each person having an interest in the lots in the subdivision to be covered by the statement of record and the extent of such interest;

(2) a legal description of, and a statement of the total area included in, the subdivision and a statement of the topography thereof, together with a map showing the division proposed and the dimensions of the lots to be covered by the statement of record and their relation to existing streets and roads;

(3) a statement of the condition of the title to the land comprising the subdivision, including all encumbrances and deed restrictions and covenants applicable thereto;

(4) a statement of the general terms and conditions, including the range of selling prices or rents at which it is proposed to dispose of the lots in the subdivision;

(5) a statement of the present condition of access to the subdivision, the existence of any unusual conditions relating to noise or safety which affect the subdivision and are known to the developer, the availability of sewage disposal facilities and other public utilities (including water, electricity, gas, and telephone facilities) in the subdivision, the proximity in miles of the subdivision to nearby municipalities, and the nature of any improvements to be installed by the developer and his estimated schedule for completion;

(6) in the case of any subdivision or portion thereof against which there exists a blanket encumbrance, a statement of the consequences for an individual purchaser of a failure, by the person or persons bound, to fulfill obligations under the instrument or instruments creating such encumbrance and the steps, if any, taken to protect the purchaser in such eventuality;

(7)(A) copy of its articles of incorporation, with all amendments thereto, if the developer is a corporation; (B) copies of all instruments by which the trust is created or declared, if the developer is a trust; (C) copies of its articles of partnership or association and all other papers pertaining to its organization, if the developer is a partnership, unincorporated association, joint stock company, or any other form of organization; and (D) if the purported holder of legal title is a person other than developer, copies of the above documents for such person;

(8) copies of the deed or other instrument establishing title to the subdivision in the developer or other person and copies of any instrument creating a lien or encumbrance upon the title of developer or other person or copies of the opinion or opinions of counsel in respect to the title to the subdivision in the developer or other person or copies of the title insurance policy guaranteeing such title;

(9) copies of all forms of conveyance to be used in selling or leasing lots to purchasers;

(10) copies of instruments creating easements or other restrictions;

(11) such certified and uncertified financial statements of the developer as the Secretary may require; and

(12) such other information and such other documents and certifications as the Secretary may require as being reasonably necessary or appropriate for the protection of purchasers.

(Pub. L. 90-448, title XIV, § 1406, Aug. 1, 1968, 82 Stat. 592; Pub. L. 91-609, title IX, § 909, Dec. 31, 1970, 84 Stat. 1811.)

AMENDMENTS

1970—Par. (5). Pub. L. 91-609 required the statement of record to contain a statement of the existence of any unusual conditions relating to noise or safety which affect the subdivision and are known to the developer.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1707 of this title.

§ 1706. Effective date of statements of record and amendments thereto

(a) Thirtieth day after filing or such earlier date as determined by Secretary; consolidation of subsequent statement with earlier recording

Except as hereinafter provided, the effective date of a statement of record, or any amendment thereto, shall be the thirtieth day after the filing thereof or such earlier date as the Secretary may determine, having due regard to the public interest and the protection of purchasers. If any amendment to any such statement is filed prior to the effective date of the statement, the statement shall be deemed to have been filed when such amendment was filed; except that such an amendment filed with the consent of the Secretary, or filed pursuant to an order of the Secretary, shall be treated as being filed as of the date of the filing of the statement of record. When a developer records additional lands to be offered for disposition, he may consolidate the subsequent statement of record with any earlier recording offering subdivided land for disposition under the same promotional plan. At the time of consolidation the developer shall include in the consolidated statement of record any material changes in the information contained in the earlier statement.

(b) Incomplete or inaccurate statements of record

If it appears to the Secretary that a statement of record, or any amendment thereto, is on its face incomplete or inaccurate in any material respect, the Secretary shall so advise the developer within a reasonable time after the filing of the statement or the amendment, but prior to the date the statement or amendment would otherwise be effective. Such notification shall serve to suspend the effective date of the statement or the amendment until thirty days after the developer files such additional information as the Secretary shall require. Any developer, upon receipt of such notice, may request a hearing, and such hearing shall be held within twenty days of receipt of such request by the Secretary.

(c) Amendment of statement of record

If, at any time subsequent to the effective date of a statement of record, a change shall occur affecting any material fact required to be contained in the statement, the developer shall promptly file an amendment thereto. Upon receipt of any such amendment, the Secretary may, if he determines such action to be necessary or appropriate in the public interest or for the protection of purchasers, suspend the statement of record until the amendment becomes effective.

(d) Suspension of statement of record containing untrue statement or omission to state material fact; notice and hearing; termination of order of suspension

If it appears to the Secretary at any time that a statement of record, which is in effect, includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Secretary may, after notice, and after opportunity for hearing (at a time fixed by the Secretary) within fifteen days after such notice, issue an order suspending the statement of record. When such statement has been amended in accordance with such order, the Secretary shall so declare and thereupon the order shall cease to be effective.

(e) Examination to determine issuance of order; access to records; order suspending statement of record upon failure to cooperate

The Secretary is hereby empowered to make an examination in any case to determine whether an order should issue under subsection (d) of this section. In making such examination, the Secretary or anyone designated by him shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the developer, any agents or any other person, in respect of any matter relevant to the examination. If the developer or any agents shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of an order suspending the statement of record.

(f) Service of notices

Any notice required under this section shall be sent to or served on the developer or his authorized agent.

(Pub. L. 90-448, title XIV, § 1407, Aug. 1, 1968, 82 Stat. 593.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1703 of this title.

§ 1707. Information required in property report; use for promotional purposes

(a) A property report relating to the lots in a subdivision shall contain such of the information contained in the statement of record, and any amendments thereto, as the Secretary may deem necessary, but need not include the documents referred to in paragraphs (7) to (11), inclusive, of section 1705 of this title. A property report shall also contain such other information as the Secretary may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of purchasers.

(b) The property report shall not be used for any promotional purposes before the statement of record becomes effective and then only if it is used in its entirety. No person may advertise or represent that the Secretary approves or recommends the subdivision or the sale or lease of lots therein. No portion of the property report shall be underscored, italicized, or printed in larger or bolder type than the balance of the statement unless the Secretary requires or permits it.

(Pub. L. 90-448, title XIV, § 1408, Aug. 1, 1968, 82 Stat. 594.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1703 of this title.

§ 1708. Cooperation with State authorities; jurisdiction of real estate commission or similar body of State

(a) In administering this chapter, the Secretary shall cooperate with State authorities charged with the responsibility of regulating the sale of lots in subdivisions which are also subject to this chapter and may accept for filing under section 1704 of this title and declare effective as a statement of record, if he finds such action to be appropriate in the public interest or for the protection of purchasers, material filed with and found acceptable by such authorities.

(b) Nothing in this chapter shall affect the jurisdiction of the real estate commission (or any agency or office performing like functions) of any State over any subdivision or any person.

(Pub. L. 90-448, title XIV, § 1409, Aug. 1, 1968, 82 Stat. 594.)

§ 1709. Civil liabilities

(a) Suit for untrue statement or omission to state material fact in statement of record

Where any part of the statement of record, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein, any person acquiring a lot in the subdivision covered by such statement of record from the developer or his agent during such period the statement remained uncorrected (unless it is proved that at the time of such acquisition he knew of such untruth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue the developer.

(b) Suit for sale or lease in violation of section 1703 of this title or by means of property report containing untrue statement or omission to state material fact

Any developer or agent, who sells or leases a lot in a subdivision—

(1) in violation of section 1703 of this title, or

(2) by means of a property report which contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein,

may be sued by the purchaser of such lot.

(c) Damages recoverable

The suit authorized under subsection (a) or (b) of this section may be to recover such damages as shall represent the difference between the amount paid for the lot and the reasonable cost of any improvements thereto, and the lesser of (1) the value thereof as of the time such suit was brought, or (2) the price at which such lot shall have been disposed of in a bona fide market transaction before suit, or (3) the price at which such lot shall have been disposed of after suit in a bona fide market transaction but before judgment.

(d) Contribution

Every person who becomes liable to make any payment under this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment.

(e) Amount recoverable

In no case shall the amount recoverable under this section exceed the sum of the purchase price of the lot, the reasonable cost of improvements, and reasonable court costs.

(Pub. L. 90-448, title XIV, § 1410, Aug. 1, 1968, 82 Stat. 595.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1711 of this title.

§ 1710. Review of orders; jurisdiction; procedure; conclusiveness of findings; additional evidence; modification of findings by Secretary; stay

(a) Any person, aggrieved by an order or determination of the Secretary issued after a hearing, may obtain a review of such order or determination in the court of appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order or determination, a written petition praying that the order or determination of the Secretary be modified or be set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record upon which the order or determination complained of was entered, as provided in section 2112 of title 28. No objection to an order or determination of the Secretary shall be considered by the court unless such objection shall have been urged before the Secretary. The finding of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be adduced upon a hearing in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts by reason of the additional evidence so taken, and shall file such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. Upon the filing of such petition, the jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Secretary, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) The commencement of proceedings under subsection (a) of this section shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

(Pub. L. 90-448, title XIV, § 1411, Aug. 1, 1968, 82 Stat. 595.)

§ 1711. Limitation of actions

No action shall be maintained to enforce any liability created under section 1709(a) or (b)(2) of this title unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under section 1709(b)(1) of this title, unless brought within two years after the violation upon which it is based. In no event shall any such action be brought by a purchaser more than three years after the sale or lease to such purchaser.

(Pub. L. 90-448, title XIV, § 1412, Aug. 1, 1968, 82 Stat. 596.)

REFERENCES IN TEXT

Section 1709(b)(1) of this title, referred to in text, in the original read "section 1401(b)(1)" but was probably intended to read "section 1410(b)(1)", which is classified to section 1709(b)(1) of this title.

§ 1712. Contrary stipulations void

Any condition, stipulation, or provision binding any person acquiring any lot in a subdivision to waive compliance with any provision of this chapter or of the rules and regulations of the Secretary shall be void.

(Pub. L. 90-448, title XIV, § 1413, Aug. 1, 1968, 82 Stat. 596.)

§ 1713. Additional remedies

The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

(Pub. L. 90-448, title XIV, § 1414, Aug. 1, 1968, 82 Stat. 596.)

§ 1714. Investigations, injunctions, and prosecution of offenses

(a) Permanent or temporary injunction or restraining order; jurisdiction

Whenever it shall appear to the Secretary that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this chapter, or of any rule or regulation prescribed pursuant thereto, he may, in his discretion, bring an action in any district court of the United States, or the United States District Court for the District of Columbia to enjoin such acts or practices, and, upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. The Secretary may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the appropriate criminal proceedings under this chapter.

(b) Investigations; publication of information concerning violations

The Secretary may, in his discretion, make such investigations as he deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or regulation prescribed pursuant thereto, and may require or permit any person to file with him a statement in writing, under oath or otherwise as the Secretary shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Secretary is authorized, in his discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which he may deem necessary or proper to aid in the enforcement of the provisions of this chapter, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this chapter relates.

(c) Oaths and affirmations; subpena power

For the purpose of any such investigation, or any other proceeding under this chapter; the Secretary, or any officer designated by him, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the Secretary deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

(d) Contempt; court order requiring attendance and testimony of witnesses; jurisdiction

In case of contumacy by, or refusal to obey a subpena issued to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memorandums, and other records and documents. And such court may issue an order requiring such person to appear before the Secretary or any officer designated by the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

(Pub. L. 90-448, title XIV, § 1415, Aug. 1, 1968, 82 Stat. 596; Pub. L. 91-452, title II, § 220, Oct. 15, 1970, 84 Stat. 929.)

AMENDMENTS

1970—Subsec. (e). Pub. L. 91-452 struck out subsec. (e) which related to the immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-452 see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

CROSS REFERENCES

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

§ 1715. Administration; delegation of functions, duties and powers; hearing officers; appeals from decisions; public hearings; record of hearings

(a) The authority and responsibility for administering this chapter shall be in the Secretary of Housing and Urban Development who may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, hearing, determining, ordering, or otherwise acting as to any work, business, or matter under this chapter. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department in compliance with sections 3105, 3344, 5362, and 7521 of title 5. The Secretary shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(b) All hearings shall be public and appropriate records thereof shall be kept, and any order issued after such hearing shall be based on the record made in such hearing which shall be conducted in accordance with the provisions of subchapter II of chapter 5, and chapter 7, of title 5.

(Pub. L. 90-448, title XIV, § 1416, Aug. 1, 1968, 82 Stat. 597.)

CODIFICATION

"Subchapter II of chapter 5, and chapter 7, of title 5" were substituted for "the Administrative Procedure Act" in subsec. (b) on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

§ 1716. Unlawful representations

The fact that a statement of record with respect to a subdivision has been filed or is in effect shall not be deemed a finding by the Secretary that the statement of record is true and accurate on its face, or be held to mean the Secretary has in any way passed upon the merits of, or given approval to, such subdivision. It shall be unlawful to make, or cause to be made, to any prospective purchaser any representation contrary to the foregoing.

(Pub. L. 90-448, title XIV, § 1417, Aug. 1, 1968, 82 Stat. 598.)

§ 1717. Penalties for violations

Any person who willfully violates any of the provisions of this chapter or the rules and regulations prescribed pursuant thereto, or any person who willfully, in a statement of record filed under, or in a property report issued pursuant to, this chapter, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein, shall upon conviction be fined not more than $5,000 or imprisoned not more than five years, or both.

(Pub. L. 90-448, title XIV, § 1418, Aug. 1, 1968, 82 Stat. 598.)

§ 1718. Rules, regulations, and orders

The Secretary shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon him elsewhere in this chapter. For the purpose of his rules and regulations, the Secretary may classify persons and matters within his jurisdiction and prescribe different requirements for different classes of persons or matters.

(Pub. L. 90-448, title XIV, § 1419, Aug. 1, 1968, 82 Stat. 598.)

§ 1719. Jurisdiction of offenses and suits

The district courts of the United States, the United States courts of any territory, and the United States District Court for the District of Columbia shall have jurisdiction of offenses and violations under this chapter and under the rules and regulations prescribed by the Secretary pursuant thereto, and concurrent with State courts, of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter. Any such suit or action may be brought to enforce any liability or duty created by this chapter. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254 and 1291 of title 28. No case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States, except where the United States or any officer or employee of the United States in his official capacity is a party. No costs shall be assessed for or against the Secretary in any proceeding under this chapter brought by or against him in the Supreme Court or such other courts.

(Pub. L. 90-448, title XIV, § 1420, Aug. 1, 1968, 82 Stat. 598.)

§ 1720. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this chapter.

(Pub. L. 90-448, title XIV, § 1421, Aug. 1, 1968, 82 Stat. 599.)

CHAPTER 43—NEWSPAPER PRESERVATION

Sec.
1801. Congressional declaration of policy.
1802. Definitions.
1803. Antitrust exemptions.
  (a) Joint operating arrangements entered into prior to July 24, 1970.
  (b) Written consent for future joint operating arrangements.
  (c) Predatory practices not exempt.
1804. Reinstatement of joint operating arrangements previously adjudged unlawful under antitrust laws.

§ 1801. Congressional declaration of policy

In the public interest of maintaining a newspaper press editorially and reportorially independent and competitive in all parts of the United States, it is hereby declared to be the public policy of the United States to preserve the publication of newspapers in any city, community, or metropolitan area where a joint operating arrangement has been heretofore entered into because of economic distress or is hereafter effected in accordance with the provisions of this chapter.

(Pub. L. 91-353, § 2, July 24, 1970, 84 Stat. 466.)

SHORT TITLE

Section 1 of Pub. L. 91-353 provided that: "This Act [which enacted this chapter] may be cited as the 'Newspaper Preservation Act'."

SEPARABILITY OF PROVISIONS

Section 6 of Pub. L. 91-353 provided that: "If any provision of this Act [which enacted this chapter] is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this Act, and the applicability of such provision to any other person or circumstance, shall not be affected thereby."

§ 1802. Definitions

As used in this chapter—

(1) The term "antitrust law" means the Federal Trade Commission Act [15 U.S.C. 41 et seq.] and each statute defined by section 4 thereof [15 U.S.C. 44] as "Antitrust Acts" and all amendments to such Act and such statutes and any other Acts in pari materia.

(2) The term "joint newspaper operating arrangement" means any contract, agreement, joint venture (whether or not incorporated), or other arrangement entered into by two or more newspaper owners for the publication of two or more newspaper publications, pursuant to which joint or common production facilities are established or operated and joint or unified action is taken or agreed to be taken with respect to any one or more of the following: printing; time, method, and field of publication; allocation of production facilities; distribution; advertising solicitation; circulation solicitation; business department; establishment of advertising rates; establishment of circulation rates and revenue distribution: *Provided*, That there is no merger, combination, or amalgamation of editorial or reportorial staffs, and that editorial policies be independently determined.

(3) The term "newspaper owner" means any person who owns or controls directly, or indirectly through separate or subsidiary corporations, one or more newspaper publications.

(4) The term "newspaper publication" means a publication produced on newsprint paper which is published in one or more issues weekly (including as one publication any daily newspaper and any Sunday newspaper published by the same owner in the same city, community, or metropolitan area), and in which a substantial portion of the content is devoted to the dissemination of news and editorial opinion.

(5) The term "failing newspaper" means a newspaper publication which, regardless of its ownership or affiliations, is in probable danger of financial failure.

(6) The term "person" means any individual, and any partnership, corporation, association, or other legal entity existing under or authorized by the law of the United States, any State or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any foreign country.

(Pub. L. 91-353, § 3, July 24, 1970, 84 Stat. 466.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in par. (1), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

§ 1803. Antitrust exemptions

(a) Joint operating arrangements entered into prior to July 24, 1970

It shall not be unlawful under any antitrust law for any person to perform, enforce, renew, or amend any joint newspaper operating arrangement entered into prior to July 24, 1970, if at the time at which such arrangement was first entered into, regardless of ownership or affiliations, not more than one of the newspaper publications involved in the performance of such arrangement was likely to remain or become a financially sound publication: *Provided*, That the terms of a renewal or amendment to a joint operating arrangement must be filed with the Department of Justice and that the amendment does not add a newspaper publication or newspaper publications to such arrangement.

(b) Written consent for future joint operating arrangements

It shall be unlawful for any person to enter into, perform, or enforce a joint operating arrangement, not already in effect, except with the prior written consent of the Attorney General of the United States. Prior to granting such approval, the Attorney General shall determine that not more than one of the newspaper publications involved in the arrangement is a publication other than a failing newspaper, and that approval of such arrangement would effectuate the policy and purpose of this chapter.

(c) Predatory practices not exempt

Nothing contained in the chapter shall be construed to exempt from any antitrust law any predatory pricing, any predatory practice, or any other conduct in the otherwise lawful operations of a joint newspaper operating arrangement which would be unlawful under any antitrust law if engaged in by a single entity. Except as provided in this chapter, no joint newspaper operating arrangement or any party thereto shall be exempt from any antitrust law.

(Pub. L. 91-353, § 4, July 24, 1970, 84 Stat. 467.)

REFERENCES IN TEXT

Any antitrust law, referred to in subsecs. (a) and (c), are the antitrust laws defined in section 1802 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1804 of this title.

§ 1804. Reinstatement of joint operating arrangements previously adjudged unlawful under antitrust laws

(a) Notwithstanding any final judgment rendered in any action brought by the United States under which a joint operating arrangement has been held to be unlawful under any antitrust law, any party to such final judgment may reinstitute said joint newspaper operating arrangement to the extent permissible under section 1803(a) of this title.

(b) The provisions of section 1803 of this title shall apply to the determination of any civil or criminal action pending in any district court of the United State[1] on July 24, 1970, in which it is alleged that any such joint operating agreement is unlawful under any antitrust law.

(Pub. L. 91-353, § 5, July 24, 1970, 84 Stat. 467.)

REFERENCES IN TEXT

Any antitrust law, referred to in subsecs. (a) and (b), are the antitrust laws defined in section 1802 of this title.

CHAPTER 44—PROTECTION OF HORSES

Sec.
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1822. Congressional statement of findings.
1823. Horse shows and exhibitions.
  (a) Disqualification of horses.
  (b) Prohibited activities.
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  (a) Criminal acts and penalties.
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  (c) Disqualification of offenders; orders; civil penalties applicable; enforcement procedures.
  (d) Production of witnesses and books, papers, and documents; depositions; fees; presumptions; jurisdiction.
  (e) Detention of horses; seizure and condemnation of equipment.
1826. Notice of violations to Attorney General.
1827. Utilization of personnel of Department of Agriculture and officers and employees of consenting States; technical and other nonfinancial assistance to State.
1828. Rules and regulations.
1829. Preemption of State laws; concurrent jurisdiction; prohibition on certain State action.
1830. Report to the Congress.
1831. Authorization of appropriations.

§ 1821. Definitions

As used in this chapter unless the context otherwise requires:

(1) The term "management" means any person who organizes, exercises control over, or administers or who is responsible for organizing, directing, or administering.

(2) The term "Secretary" means the Secretary of Agriculture.

(3) The term "sore" when used to describe a horse means that—

(A) an irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse,

(B) any burn, cut, or laceration has been inflicted by a person on any limb of a horse,

(C) any tack, nail, screw, or chemical agent has been injected by a person into or used by a person on any limb of a horse, or

(D) any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse,

and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of a horse by or under the supervision of a person licensed to practice veterinary medicine in the State in which such treatment was given.

(4) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(Pub. L. 91-540, § 2, Dec. 9, 1970, 84 Stat. 1404; Pub. L. 94-360, § 3, July 13, 1976, 90 Stat. 915.)

AMENDMENTS

1976—Pub. L. 94-360 added pars. (1) and (2), redesignated subsec. (a), defining the term "sore" as meaning that certain substances or devices had been applied to any limb of a horse prior to Dec. 9, 1970, resulting in, or reasonably likely to result in, such horse suffering physical pain or distress when walking or trotting, as par. (3) and, as so redesignated, eliminated the requirement that such substance or device had to have been applied prior to Dec. 9, 1970 in order for a horse to be considered "sored" for purposes of this chapter, and substituted par. (4) defining the term "State" for subsec. (b) defining the term "commerce" as between a point in any State or possession of the United States and any point outside thereof, or between points within the same State or possession of the United States but through any place outside thereof, or within the District of Columbia, or from any foreign country to any point within the United States.

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[1] So in original. Word "State" should read "States".

SHORT TITLE OF 1976 AMENDMENT

Section 1(a) of Pub. L. 94-360 provided that: "This Act [amending this section, sections 1822 to 1825, 1827, 1830 and 1831 of this title, and enacting provisions set out as notes under this section and section 1831 of this title] may be cited as the 'Horse Protection Act Amendments of 1976'."

SHORT TITLE

Section 1 of Pub. L. 91-540, as amended by Pub. L. 94-360, § 2, July 13, 1976, 90 Stat. 915, provided: "That this Act [enacting this chapter] may be cited as the 'Horse Protection Act'."

§ 1822. Congressional statement of findings

The Congress finds and declares that—

(1) the soring of horses is cruel and inhumane;

(2) horses shown or exhibited which are sore, where such soreness improves the performance of such horse, compete unfairly with horses which are not sore;

(3) the movement, showing, exhibition, or sale of sore horses in intrastate commerce adversely affects and burdens interstate and foreign commerce;

(4) all horses which are subject to regulation under this chapter are either in interstate or foreign commerce or substantially affect such commerce; and

(5) regulation under this chapter by the Secretary is appropriate to prevent and eliminate burdens upon commerce and to effectively regulate commerce.

(Pub. L. 91-540, § 3, Dec. 9, 1970, 84 Stat. 1405; Pub. L. 94-360, § 4, July 13, 1976, 90 Stat. 915.)

AMENDMENTS

1976—Pub. L. 94-360, among other changes, added findings stating that all horses subject to regulation under this chapter are either in interstate or foreign commerce or substantially affect interstate or foreign commerce, and that regulation by the Secretary is appropriate to eliminate burdens upon commerce.

§ 1823. Horse shows and exhibitions

(a) Disqualification of horses

The management of any horse show or horse exhibition shall disqualify any horse from being shown or exhibited (1) which is sore or (2) if the management has been notified by a person appointed in accordance with regulations under subsection (c) of this section or by the Secretary that the horse is sore.

(b) Prohibited activities

The management of any horse sale or auction shall prohibit the sale or auction or exhibition for the purpose of sale of any horse (1) which is sore or (2) if the management has been notified by a person appointed in accordance with regulations under subsection (c) of this section or by the Secretary that the horse is sore.

(c) Appointment of inspectors; manner of inspections

The Secretary shall prescribe by regulation requirements for the appointment by the management of any horse show, horse exhibition, or horse sale or auction of persons qualified to detect and diagnose a horse which is sore or to otherwise inspect horses for the purposes of enforcing this chapter. Such requirements shall prohibit the appointment of persons who, after notice and opportunity for a hearing, have been disqualified by the Secretary to make such detection, diagnosis, or inspection. Appointment of a person in accordance with the requirements prescribed under this subsection shall not be construed as authorizing such person to conduct inspections in a manner other than that prescribed for inspections by the Secretary (or the Secretary's representative) under subsection (e) of this section.

(d) Recordkeeping and reporting requirements; availability of records

The management of a horse show, horse exhibition, or horse sale or auction shall establish and maintain such records, make such reports, and provide such information as the Secretary may by regulation reasonably require for the purposes of implementing this chapter or to determine compliance with this chapter. Upon request of an officer or employee duly designated by the Secretary, such management shall permit entry at all reasonable times for the inspection and copying (on or off the premises) of records required to be maintained under this subsection.

(e) Inspection by secretary or duly appointed representative

For purposes of enforcement of this chapter (including any regulation promulgated under this chapter) the Secretary, or any representative of the Secretary duly designated by the Secretary, may inspect any horse show, horse exhibition, or horse sale or auction or any horse at any such show, exhibition, sale, or auction. Such an inspection may only be made upon presenting appropriate credentials. Each such inspection shall be commenced and completed with reasonable promptness and shall be conducted within reasonable limits and in a reasonable manner. An inspection under this subsection shall extend to all things (including records) bearing on whether the requirements of this chapter have been complied with.

(Pub. L. 91-540, § 4, Dec. 9, 1970, 84 Stat. 1405; Pub. L. 94-360, § 5, July 13, 1976, 90 Stat. 916.)

AMENDMENTS

1976—Pub. L. 94-360 substituted provisions relating to the inspection and disqualification of horses participating in horse shows and exhibitions, the issuance of regulations by the Secretary, and the maintenance of records by horse show management, for provisions prohibiting as constituting unlawful acts the exhibition of sored horses, the transportation in commerce for purposes of exhibition of any horse that had been sored, and the conducting of any show or exhibition in which sored horses appear. Provisions now covering such unlawful acts are set out as section 1824 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1824, 1825 of this title.

§ 1824. Unlawful acts

The following conduct is prohibited:

(1) The shipping, transporting, moving, delivering, or receiving of any horse which is sore with reason to believe that such horse while it is sore may be shown, exhibited, entered for the purpose of being shown or exhibited, sold, auctioned, or offered for sale, in any horse show, horse exhibition, or horse sale or auction; except that this paragraph does not apply to the shipping, transporting, moving, delivering, or receiving of any horse by a common or contract carrier or an employee thereof in the usual course of the carrier's business or employee's employment unless the carrier or employee has reason to believe that such horse is sore.

(2) The (A) showing or exhibiting, in any horse show or horse exhibition, of any horse which is sore, (B) entering for the purpose of showing or exhibiting in any horse show or horse exhibition, any horse which is sore, (C) selling, auctioning, or offering for sale, in any horse sale or auction, any horse which is sore, and (D) allowing any activity described in clause (A), (B), or (C) respecting a horse which is sore by the owner of such horse.

(3) The failure by the management of any horse show or horse exhibition, which does not appoint and retain a person in accordance with section 1823(c) of this title, to disqualify from being shown or exhibited any horse which is sore.

(4) The failure by the management of any horse sale or auction, which does not appoint and retain a qualified person in accordance with section 1823(c) of this title, to prohibit the sale, offering for sale, or auction of any horse which is sore.

(5) The failure by the management of any horse show or horse exhibition, which has appointed and retained a person in accordance with section 1823(c) of this title, to disqualify from being shown or exhibited any horse (A) which is sore, and (B) after having been notified by such person or the Secretary that the horse is sore or after otherwise having knowledge that the horse is sore.

(6) The failure by the management of any horse sale or auction which has appointed and retained a person in accordance with section 1823(c) of this title, to prohibit the sale, offering for sale, or auction of any horse (A) which is sore, and (B) after having been notified by such person or the Secretary or after otherwise having knowledge that the horse is sore.

(7) The showing or exhibiting at a horse show or horse exhibition; the selling or auctioning at a horse sale or auction; the allowing to be shown, exhibited, or sold at a horse show, horse exhibition, or horse sale or auction; the entering for the purpose of showing or exhibiting in any horse show or horse exhibition; or offering for sale at a horse sale or auction, any horse which is wearing or bearing any equipment, device, paraphernalia, or substance which the Secretary by regulation under section 1828 of this title prohibits to prevent the soring of horses.

(8) The failing to establish, maintain, or submit records, notices, reports, or other information required under section 1823 of this title.

(9) The failure or refusal to permit access to or copying of records, or the failure or refusal to permit entry or inspection, as required by section 1823 of this title.

(10) The removal of any marking required by the Secretary to identify a horse as being detained.

(11) The failure or refusal to provide the Secretary with adequate space or facilities, as the Secretary may by regulation under section 1828 of this title prescribe, in which to conduct inspections or any other activity authorized to be performed by the Secretary under this chapter.

(Pub. L. 91-540, § 5, Dec. 9, 1970, 84 Stat. 1405; Pub. L. 94-360, § 6, July 13, 1976, 90 Stat. 916.)

AMENDMENTS

1976—Pub. L. 94-360 substituted provisions prohibiting the transportation, receipt, exhibition, sale, or auction of a sored horse, and the showing, sale or auction of a horse bearing any device or substance prohibited by regulation of the Secretary, and making the management of a horse show, exhibition, or sale, responsible for failure to disqualify such horses from participating, and for interfering with the conducting of inspections by the Secretary of horses in the show or of the management records, for provisions authorizing the inspection of horses, transported in commerce, and requiring the management of shows and exhibitions to maintain such records as the Secretary prescribes. Provisions now covering the maintenance of records and the inspection of horses are set out as section 1823 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1825, 1827 of this title.

§ 1825. Violations and penalties

(a) Criminal acts and penalties

(1) Except as provided in paragraph (2) of this subsection, any person who knowingly violates section 1824 of this title shall, upon conviction thereof, be fined not more than $3,000, or imprisoned for not more than one year, or both.

(2)(A) If any person knowingly violates section 1824 of this title, after one or more prior convictions of such person for such a violation have become final, such person shall, upon conviction thereof, be fined not more than $5,000, or imprisoned for not more than two years, or both.

(B) Any person who knowingly makes, or causes to be made, a false entry or statement in any report required under this chapter; who knowingly makes, or causes to be made, any false entry in any account, record, or memorandum required to be established and maintained by any person or in any notification or other information required to be submitted to the Secretary under section 1823 of this title; who knowingly neglects or fails to make or cause to be made, full, true, and correct entries in such accounts, records, memoranda, notification, or other materials; who knowingly removes any such documentary evidence out of the jurisdiction of the United States; who knowingly mutilates, alters, or by any other means falsifies any such documentary evidence; or who knowingly refuses to submit any such documentary evidence to the Secretary for inspection and copying shall be guilty of an offense against the United States, and upon conviction thereof shall be fined not more than $5,000, or imprisoned for not more than three years, or both.

(C) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this chapter shall be fined not more than $5,000, or imprisoned not more than three years, or both. Whoever, in the commission of such acts, uses a deadly or dangerous weapon shall be fined not more than $10,000, or imprisoned not more than ten years, or both. Whoever kills any person while engaged in or on account of the performance of his official duties under this chapter shall be punishable as provided under sections 1111 and 1112 of title 18.

(b) Civil penalties; review and enforcement

(1) Any person who violates section 1824 of this title shall be liable to the United States for a civil penalty of not more than $2,000 for each violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing before the Secretary with respect to such violation. The amount of such civil penalty shall be assessed by the Secretary by written order. In determining the amount of such penalty, the Secretary shall take into account all factors relevant to such determination, including the nature, circumstances, extent, and gravity of the prohibited conduct and, with respect to the person found to have engaged in such conduct, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) Any person against whom a violation is found and a civil penalty assessed under paragraph (1) of this subsection may obtain review in the court of appeals of the United States for the circuit in which such person resides or has his place of business or in the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found and such penalty assessed, as provided in section 2112 of title 28. The findings of the Secretary shall be set aside if found to be unsupported by substantial evidence.

(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(4) The Secretary may, in his discretion, compromise, modify, or remit, with or without conditions, any civil penalty assessed under this subsection.

(c) Disqualification of offenders; orders; civil penalties applicable; enforcement procedures

In addition to any fine, imprisonment, or civil penalty authorized under this section, any person who was convicted under subsection (a) of this section or who paid a civil penalty assessed under subsection (b) of this section or is subject to a final order under such subsection assessing a civil penalty for any violation of any provision of this chapter or any regulation issued under this chapter may be disqualified by order of the Secretary, after notice and an opportunity for a hearing before the Secretary, from showing or exhibiting any horse, judging or managing any horse show, horse exhibition, or horse sale or auction for a period of not less than one year for the first violation and not less than five years for any subsequent violation. Any person who knowingly fails to obey an order of disqualification shall be subject to a civil penalty of not more than $3,000 for each violation. Any horse show, horse exhibition, or horse sale or auction, or the management thereof, collectively and severally, which knowingly allows any person who is under an order of disqualification to show or exhibit any horse, to enter for the purpose of showing or exhibiting any horse, to take part in managing or judging, or otherwise to participate in any horse show, horse exhibition, or horse sale or auction in violation of an order shall be subject to a civil penalty of not more than $3,000 for each violation. The provisions of subsection (b) of this section respecting the assessment, review, collection, and compromise, modification, and remission of a civil penalty apply with respect to civil penalties under this subsection.

(d) Production of witnesses and books, papers, and documents; depositions; fees; presumptions; jurisdiction

(1) The Secretary may require by subpena the attendance and testimony of witnesses and the production of books, papers, and documents relating to any matter under investigation or the subject of a proceeding. Witnesses summoned before the Secretary shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(2) The attendance of witnesses, and the production of books, papers, and documents, may be required at any designated place from any place in the United States. In case of disobedience to a subpena the Secretary, or any party to a proceeding before the Secretary, may invoke the aid of any appropriate district court of the United States in requiring attendance and testimony of witnesses and the production of such books, papers, and documents under the provisions of this chapter.

(3) The Secretary may order testimony to be taken by deposition under oath in any proceeding or investigation pending before him, at any stage of the proceeding or investigation. Depositions may be taken before any person designated by the Secretary who has power to administer oaths. The Secretary may also require the production of books, papers, and documents at the taking of depositions.

(4) Witnesses whose depositions are taken and the persons taking them shall be entitled to the same fees as paid for like services in the

courts of the United States or in other jurisdictions in which they may appear.

(5) In any civil or criminal action to enforce this chapter or any regulation under this chapter a horse shall be presumed to be a horse which is sore if it manifests abnormal sensitivity or inflammation in both of its forelimbs or both of its hindlimbs.

(6) The United States district courts, the District Court of Guam, the District Court of the Virgin Islands, the highest court of American Samoa, and the United States courts of the other territories, are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of this chapter, and shall have jurisdiction in all other kinds of cases arising under this chapter, except as provided in subsection (b) of this section.

(e) Detention of horses; seizure and condemnation of equipment

(1) The Secretary may detain (for a period not to exceed twenty-four hours) for examination, testing, or the taking of evidence, any horse at any horse show, horse exhibition, or horse sale or auction which is sore or which the Secretary has probable cause to believe is sore. The Secretary may require the temporary marking of any horse during the period of its detention for the purpose of identifying the horse as detained. A horse which is detained subject to this paragraph shall not be moved by any person from the place it is so detained except as authorized by the Secretary or until the expiration of the detention period applicable to the horse.

(2) Any equipment, device, paraphernalia, or substance which was used in violation of any provision of this chapter or any regulation issued under this chapter or which contributed to the soring of any horse at or prior to any horse show, horse exhibition, or horse sale or auction, shall be liable to be proceeded against, by process of libel for the seizure and condemnation of such equipment, device, paraphernalia, or substance, in any United States district court within the jurisdiction of which such equipment, device, paraphernalia, or substance is found. Such proceedings shall conform as nearly as possible to proceedings in rem in admiralty.

(Pub. L. 91-540, § 6, Dec. 9, 1970, 84 Stat. 1406; Pub. L. 94-360, § 7, July 13, 1976, 90 Stat. 918.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-360 substituted provisions increasing the maximum amount of fine that can be imposed and the maximum length of imprisonment that can be ordered for knowingly performing enumerated activities prohibited under this chapter, for provisions authorizing a maximum civil penalty of $1,000 for each unintentional violation of this chapter, requiring notice to an alleged violator prior to assessment of any penalty and authorizing the institution of civil actions by the Attorney General to enforce such penalties.

Subsec. (b). Pub. L. 94-360 substituted provisions relating to imposition of civil penalties up to $2,000, criteria for imposition of particular amounts, and procedures for review and enforcement of civil penalties, for provisions authorizing fines up to $2,000 and/or imprisonment up to six months for intentional violations of provisions of this chapter or any regulation issued thereunder.

Subsecs. (c)-(e). Pub. L. 94-360 added subsecs. (c) to (e).

§ 1826. Notice of violations to Attorney General

Whenever the Secretary believes that a willful violation of this chapter has occurred and that prosecution is needed to obtain compliance with this chapter, he shall inform the Attorney General and the Attorney General shall take such action with respect to such matter as he deems appropriate.

(Pub. L. 91-540, § 7, Dec. 9, 1970, 84 Stat. 1406.)

§ 1827. Utilization of personnel of Department of Agriculture and officers and employees of consenting States; technical and other nonfinancial assistance to State

(a) The Secretary, in carrying out the provisions of this chapter, shall utilize, to the maximum extent practicable, the existing personnel and facilities of the Department of Agriculture. The Secretary is further authorized to utilize the officers and employees of any State, with its consent, and with or without reimbursement, to assist him in carrying out the provisions of this chapter.

(b) The Secretary may, upon request, provide technical and other nonfinancial assistance (including the lending of equipment on such terms and conditions as the Secretary determines is appropriate) to any State to assist it in administering and enforcing any law of such State designed to prohibit conduct described in section 1824 of this title.

(Pub. L. 91-540, § 8, Dec. 9, 1970, 84 Stat. 1406; Pub. L. 94-360, § 8, July 13, 1976, 90 Stat. 920.)

AMENDMENTS

1976—Pub. L. 94-360 designated existing provision as subsec. (a) and added subsec. (b).

§ 1828. Rules and regulations

The Secretary is authorized to issue such rules and regulations as he deems necessary to carry out the provisions of this chapter.

(Pub. L. 91-540, § 9, Dec. 9, 1970, 84 Stat. 1406.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1824 of this title.

§ 1829. Preemption of State laws; concurrent jurisdiction; prohibition on certain State action

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together. Nor shall any provision of this chapter be construed to exclude the Federal Government from enforcing the provision of this chapter within any State, whether or not such State has enacted legislation on the same subject, it being the intent of the Congress to establish concurrent jurisdiction with the States over such subject matter. In no case shall any such State take any action pursuant to this section involving a violation of any such law of that State which would preclude the United States from enforcing the provisions of this chapter against any person.

(Pub. L. 91-540, § 10, Dec. 9, 1970, 84 Stat. 1406.)

§ 1830. Report to the Congress

On or before the expiration of thirty calendar months following December 9, 1970, and every twelve calendar months thereafter, the Secretary shall submit to the Congress a report upon the matters covered by this chapter, including enforcement and other actions taken thereunder, together with such recommendations for legislative and other action as he deems appropriate.

(Pub. L. 91-540, § 11, Dec. 9, 1970, 84 Stat. 1406; Pub. L. 94-360, § 9, July 13, 1976, 90 Stat. 920.)

AMENDMENTS

1976—Pub. L. 94-360 substituted "twelve calendar months" for "twenty-four calendar-month period".

§ 1831. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter $125,000 for the period beginning July 1, 1976, and ending September 30, 1976; and for the fiscal year beginning October 1, 1976, and for each fiscal year thereafter there are authorized to be appropriated such sums, not to exceed $500,000, as may be necessary to carry out this chapter.

(Pub. L. 91-540, § 12, Dec. 9, 1970, 84 Stat. 1407; Pub. L. 94-360, § 10, July 13, 1976, 90 Stat. 921.)

AMENDMENTS

1976—Pub. L. 94-360 substituted provisions authorizing $125,000 to be appropriated for the period beginning July 1, 1976 and ending September 30, 1976, and $500,000 to be appropriated for the fiscal year beginning October 1, 1976, and each fiscal year thereafter, to carry out the purposes of this chapter, for provisions authorizing not more than $100,000 to be appropriated annually to carry out the provisions of this chapter.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 10 of Pub. L. 94-360 provided in part that the amendment by Pub. L. 94-360 is effective July 1, 1976.

CHAPTER 45—EMERGENCY LOAN GUARANTEES TO BUSINESS ENTERPRISES

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§ 1841. Emergency Loan Guarantee Board; establishment; membership; voting

There is created an Emergency Loan Guarantee Board (referred to in this chapter as the "Board") composed of the Secretary of the Treasury, as Chairman, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairman of the Securities and Exchange Commission. Decisions of the Board shall be made by majority vote.

(Pub. L. 92-70, § 2, Aug. 9, 1971, 85 Stat. 178.)

SHORT TITLE

Section 1 of Pub. L. 92-70 provided that: "This Act [enacting this chapter] may be cited as the 'Emergency Loan Guarantee Act'."

§ 1842. Authority for loan guarantees; terms and conditions

The Board, on such terms and conditions as it deems appropriate, may guarantee, or make commitments to guarantee, lenders against loss of principal or interest on loans that meet the requirements of this chapter.

(Pub. L. 92-70, § 3, Aug. 9, 1971, 85 Stat. 178.)

§ 1843. Limitations and conditions of loan guarantees

(a) Necessary findings

A guarantee of a loan may be made under this chapter only if—

(1) the Board finds that (A) the loan is needed to enable the borrower to continue to furnish goods or services and failure to meet this need would adversely and seriously affect the economy of or employment in the Nation or any region thereof, (B) credit is not otherwise available to the borrower under reasonable terms or conditions, and (C) the prospective earning power of the borrower, together with the character and value of the security pledged, furnish reasonable assurance that it will be able to repay the loan within the time fixed, and afford reasonable protection to the United States; and

(2) the lender certifies that it would not make the loan without such guarantee.

(b) Term of loans; renewal

Loans guaranteed under this chapter shall be payable in not more than five years, but may be renewable for not more than an additional three years.

(c) Interest rates, determination; guarantee fee

(1) Loans guaranteed under this chapter shall bear interest payable to the lending institutions at rates determined by the Board taking into account the reduction in risk afforded by the loan guarantee and rates charged by lending institutions on otherwise comparable loans.

(2) The Board shall prescribe and collect a guarantee fee in connection with each loan guaranteed under this chapter. Such fee shall reflect the Government's administrative expense in making the guarantee and the risk assumed by the Government and shall not be less than an amount which, when added to the amount of interest payable to the lender of such loan, produces a total charge appropriate for loan agreements of comparable risk and maturity if supplied by the normal capital markets.

(Pub. L. 92-70, § 4, Aug. 9, 1971, 85 Stat. 178.)

§ 1844. Security for loan guarantees

In negotiating a loan guarantee under this chapter, the Board shall make every effort to arrange that the payment of the principal of and interest on any plan guaranteed shall be secured by sufficient property of the enterprise to collateralize fully the amount of the loan guarantee.

(Pub. L. 92-70, § 5, Aug. 9, 1971, 85 Stat. 179.)

§ 1845. Requirements applicable to loan guarantees

(a) Stock dividends or other payments, prohibition; waiver

A guarantee agreement made under this chapter with respect to an enterprise shall require that while there is any principal or interest remaining unpaid on a guaranteed loan to that enterprise the enterprise may not—

(1) declare a dividend on its common stock; or

(2) make any payment on its other indebtedness to a lender whose loan has been guaranteed under this chapter.

The Board may waive either or both of the requirements set forth in this subsection, as specified in the guarantee agreement covering a loan to any particular enterprise, if it determines that such waiver is not inconsistent with the reasonable protection of the interests of the United States under the guarantee.

(b) Managerial changes

If the Board determines that the inability of an enterprise to obtain credit without a guarantee under this chapter is the result of a failure on the part of management to exercise reasonable business prudence in the conduct of the affairs of the enterprise, the Board shall require before guaranteeing any loan to the enterprise that the enterprise make such management changes as the Board deems necessary to give the enterprise a sound managerial base.

(c) Financial statement; access to documents

A guarantee of a loan to any enterprise shall not be made under this chapter unless—

(1) the Board has received an audited financial statement of the enterprise; and

(2) the enterprise permits the Board to have the same access to its books and other documents as the Board would have under section 1846 of this title in the event the loan is guaranteed.

(d) Exhaustion of remedies

No payment shall be made or become due under a guarantee entered into under this chapter unless the lender has exhausted any remedies which it may have under the guarantee agreement.

(e) Protective provisions; advances

(1) Prior to making any guarantee under this chapter, the Board shall satisfy itself that the underlying loan agreement on which the guarantee is sought contains all the affirmative and negative covenants and other protective provisions which are usual and customary in loan agreements of a similar kind, including previous loan agreements between the lender and the borrower, and that it cannot be amended, or any provisions waived, without the Board's prior consent.

(2) On each occasion when the borrower seeks an advance under the loan agreement, the guarantee authorized by this chapter shall be in force as to the funds advanced only if—

(A) the lender gives the Board at least ten days' notice in writing of its intent to provide the borrower with funds pursuant to the loan agreement;

(B) the lender certifies to the Board before an advance is made that, as of the date of the notice provided for in subparagraph (A), the borrower is not in default under the loan agreement: *Provided*, That if a default has occurred the lender shall report the facts and circumstances relating thereto to the Board and the Board may expressly and in writing waive such default in any case where it determines that such waiver is not inconsistent with the reasonable protection of the interests of the United States under the guarantee; and

(C) the borrower provides the Board with a plan setting forth the expenditures for which the advance will be used and the period during which the expenditures will be made, and, upon the expiration of such periods, reports to the Board any instances in which amounts advanced have not been expended in accordance with the plan.

(f) Loan security, priority; collateral

(1) A guarantee agreement made under this chapter shall contain a requirement that as between the Board and the lender, the Board shall have a priority with respect to, and to the extent of, the lender's interest in any collateral securing the loan and any earlier outstanding loans. The Board shall take all steps necessary to assure such priority against any other persons.

(2) As used in paragraph (1) of this subsection, the term "collateral" includes all assets pledged under loan agreements and, if appropriate in the opinion of the Board, all sums of the borrower on deposit with the lender and subject to offset under section 108 of title 11.

(Pub. L. 92-70, § 6, Aug. 9, 1971, 85 Stat. 179.)

§ 1846. Powers and duties

(a) Board; inspection of documents; disapproval of certain transactions

The Board is authorized to inspect and copy all accounts, books, records, memoranda, correspondence, and other documents of any enterprise which has received financial assistance under this chapter concerning any matter which may bear upon (1) the ability of such enterprise to repay the loan within the time fixed therefor; (2) the interests of the United States in the property of such enterprise; and (3) the assurance that there is reasonable protection to the United States. The Board is authorized to disapprove any transaction of such enterprise involving the disposition of its assets which may affect the repayment of a loan that has been guaranteed pursuant to the provisions of this chapter.

(b) General Accounting Office; audit; report to Board and Congress

The General Accounting Office shall make a detailed audit of all accounts, books, records, and transactions of any borrower with respect to which an application for a loan guarantee is made under this chapter. The General Accounting Office shall report the results of such audit to the Board and to the Congress.

(Pub. L. 92-70, § 7, Aug. 9, 1971, 85 Stat. 180.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1845 of this title.

§ 1847. Maximum obligation

The maximum obligation of the Board under all outstanding loans guaranteed by it shall not exceed at any time $250,000,000.

(Pub. L. 92-70, § 8, Aug. 9, 1971, 85 Stat. 181.)

§ 1848. Emergency loan guarantee fund

(a) Establishment; use; investment

There is established in the Treasury an emergency loan guarantee fund to be administered by the Board. The fund shall be used for the payment of the expenses of the Board and for the purpose of fulfilling the Board's obligations under this chapter. Moneys in the fund not needed for current operations may be invested in direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof.

(b) Guarantee fee; deposits in fund

The Board shall prescribe and collect a guarantee fee in connection with each loan guaranteed by it under this chapter. Sums realized from such fees shall be deposited in the emergency loan guarantee fund.

(c) Payments; issuance of notes or other obligations when fund moneys insufficient: forms and denominations, maturities, terms and conditions, interest rate; public debt transaction

Payments required to be made as a consequence of any guarantee by the Board shall be made from the emergency loan guarantee fund. In the event that moneys in the fund are insufficient to make such payments, in order to discharge its responsibilities, the Board is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Board with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include any purchase of such notes and obligations.

(Pub. L. 92-70, § 9, Aug. 9, 1971, 85 Stat. 181.)

REFERENCES IN TEXT

The Second Liberty Bond Act, as amended, referred to in subsec. (c), is act Sept. 24, 1917, ch. 56, 40 Stat. 288. For classification of this Act to the Code, see References in Text note set out under section 774 of Title 31, Money and Finance, and Tables volume.

§ 1849. Federal reserve banks as fiscal agents

Any Federal Reserve bank which is requested to do so shall act as fiscal agent for the Board. Each such fiscal agent shall be reimbursed by the Board for all expenses and losses incurred by it in acting as agent on behalf of the Board.

(Pub. L. 92-70, § 10. Aug. 9, 1971, 85 Stat. 181.)

§ 1850. Protection of Government's interest

(a) Attorney General, enforcement authority; payments into emergency loan guarantee fund

The Attorney General shall take such action as may be appropriate to enforce any right accruing to the United States or any officer or agency thereof as a result of the issuance of guarantees under this chapter. Any sums recovered pursuant to this section shall be paid into the emergency loan guarantee fund.

(b) Recovery rights; subrogation

The Board shall be entitled to recover from the borrower, or any other person liable therefor, the amount of any payments made pursuant to any guarantee agreement entered into under this chapter, and upon making any such payment, the Board shall be subrogated to all the rights of the recipient thereof.

(Pub. L. 92-70, § 11, Aug. 9, 1971, 85 Stat. 181.)

§ 1851. Reports to Congress; recommendations

The Board shall submit to the Congress annually a full report of its operations under this chapter. In addition, the Board shall submit to the Congress a special report not later than June 30, 1973, which shall include a full report of the Board's operations together with its recommendations with respect to the need to continue the guarantee program beyond the termination date specified in section 1852 of this title. If the Board recommends that the program should be continued beyond such termination date, it shall state its recommendations with respect to the appropriate board, agency, or corporation which should administer the program.

(Pub. L. 92-70, § 12, Aug. 9, 1971, 85 Stat. 182.)

§ 1852. Termination date

The authority of the Board to enter into any guarantee or to make any commitment to guarantee under this chapter terminates on December 31, 1973. Such termination does not affect the carrying out of any contract, guarantee, commitment, or other obligation entered into pursuant to this chapter prior to that date, or the taking of any action necessary to preserve or protect the interests of the United States in any amounts advanced or paid out in carrying on operations under this chapter.

(Pub. L. 92-70, § 13, Aug. 9, 1971, 85 Stat. 182.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1851 of this title.

CHAPTER 46—MOTOR VEHICLE INFORMATION AND COST SAVINGS

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1912. Promulgation of bumper standards.
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    (a) Filing of petition; time for filing; jurisdiction; venue; transmittal of copy of petition to Secretary; filing of record of proceedings by Secretary.
    (b) Additional evidence before Secretary; procedure; findings and recommendations of Secretary.
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    (b) Disclosure of confidential information.
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1917. Enforcement provisions.
    (a) Civil penalties; assessment and collection in civil action; separate nature of violations; maximum amount of penalties.
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  (b) Scope of reports and information.
  (c) Considerations governing request by Secretary for reports and information.
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1947. Injunctive relief to restrain violations of information requirements; petition; jurisdiction; notice by Secretary to person against whom action is contemplated for opportunity to present views and achieve compliance; venue; subpenas for witnesses.
1948. Civil penalties for violations of information requirements.
  (a) Separate nature of violations; maximum amount of penalties.
  (b) Compromise of penalty by Secretary; determination of amount of penalty or amount of compromised penalty; deduction of amount of penalty.
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  (b) Grants and technical assistance to States; consultations with Administrator of Environmental Protection Agency.
  (c) Conduct or supervision by States of demonstration projects; nonprofit performance of diagnositic inspection services; limitations on demonstration projects.
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1988. Disclosure requirements upon transfer of ownership of motor vehicle.
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1989. Civil actions to enforce liability for violations of odometer requirements; amount of damages; jurisdiction; period of limitation.
1990. Injunctive relief to restrain violations; jurisdiction; venue; service of process; subpoenas for witnesses.
1990a. State action to restrain violation or recover damages; period of limitation and jurisdiction of federal and state courts.
1990b. Civil penalty; maximum amounts; assessment, collection, and compromise; determination of amount of compromised penalty.
1990c. Criminal penalties; liability of director, etc., of corporation.
1990d. Inspections and investigations.
  (a) Authorization of Secretary; cooperation with State and local officials; power of designated officers or employees to enter, impound, and inspect; compensation for impounding of motor vehicles or equipment.
  (b) Recordkeeping requirements.
  (c) Administrative proceedings; access to and copying of documentary evidence; written reports and answers; judicial enforcement of subpoenas or orders; witness fees and mileage.
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  (c) Tests, reports, etc., which may be required of manufacturers.
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2008. Civil penalty.
  (a) Penalty for violations; credit against penalty.
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2009. State laws.
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  (a) Examination of fuel economy representations.
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  (c) Results of tests; publication in Federal Register.
  (d) Rules establishing tests and procedures for evaluation of retrofit devices.
  (e) Definitions.
2012. Reports to Congress.

§ 1901. Definitions

For the purpose of this chapter (except part A of subchapter V):

(1) The term "passenger motor vehicle" means a motor vehicle with motive power, designed for carrying twelve persons or less, except (A) a motorcycle or (B) a truck not designed primarily to carry its operator or passengers.

(2) The term "multipurpose passenger vehicle" means a passenger motor vehicle which is constructed either on a truck chassis or with special features for occasional off-road operation.

(3) The term "passenger motor vehicle equipment" means (A) any system, part or component of a passenger motor vehicle as originally manufactured or any similar part or component manufactured or sold for replacement or improvement of such system, part, or component or as an accessory, or addition to a passenger motor vehicle, or (B) a towing device.

(4) The term "towing device" means any device manufactured or sold for use in towing a passenger motor vehicle.

(5) The term "property loss reduction standard" means a minimum performance standard established for the purpose of increasing the resistance of passenger motor vehicles or passenger motor vehicle equipment to damage resulting from motor vehicle accidents or for the purpose of reducing the cost of repairing such vehicles or such equipment damaged as a result of such accidents.

(6) The term "bumper standard" means any property loss reduction standard the purpose of which is (A) to eliminate or reduce substantially physical damage to the front or rear ends (or both) of a passenger motor vehicle resulting from (i) a low-speed collision (including but not limited to a low-speed collision with a fixed barrier) or (ii) from the towing of such vehicle, or (B) to reduce substantially the cost of repair of the front or rear ends (or both) of such a vehicle when damaged (i) in such a collision or (ii) as a result of being towed; but such a standard may not specify a specific dollar amount for the cost of repair of a vehicle when so damaged.

(7) The term "manufacturer" means any person engaged in the manufacturing or assembling of passenger motor vehicles or passenger motor vehicle equipment including any person importing motor vehicles or motor vehicle equipment for resale.

(8) The term "make" when used in describing a passenger motor vehicle means the trade name of the manufacturer of that vehicle.

(9) The term "model" when used in describing a passenger motor vehicle means a category of passenger motor vehicle based upon the

size, style, and type of any make of passenger motor vehicle.

(10) The term "motor vehicle accident" means an accident arising out of the operation, maintenance, or use of a passenger motor vehicle or passenger motor vehicle equipment.

(11) The term "Secretary" means the Secretary of Transportation.

(12) The term "insurer of passenger motor vehicles" means any person engaged in the business of issuing (or reinsuring, in whole or part) passenger motor vehicle insurance policies.

(13) The term "damage susceptibility" means susceptibility to physical damage incurred by a passenger motor vehicle involved in a motor vehicle accident.

(14) The term "crashworthiness" means the protection that a passenger motor vehicle affords its passengers against personal injury or death as a result of a motor vehicle accident.

(15) The term "motor vehicle" means any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails.

(16) The term "State" includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

(17) The term "interstate commerce" means commerce between any place in a State and any place in another State, or between places in the same State through another State.

(18) The term "United States district courts" means the Federal district courts of the United States and the United States courts of the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

(Pub. L. 92-513, § 2, Oct. 20, 1972, 86 Stat. 947; Pub. L. 94-163, title III, § 301 (pt.), Dec. 22, 1975, 89 Stat. 901.)

AMENDMENTS

1975—Pub. L. 94-163 inserted "(except part A of subchapter V)" in the provisions preceding par. (1).

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94-364, § 1, July 14, 1976, 90 Stat. 981, provided that: "This Act [enacting sections 1990a to 1990g of this title, and amending sections 1921, 1941, 1949, 1963, 1963a, 1964, 1982 to 1985, 1987, 1988, and 1990 of this title] may be cited as the 'Motor Vehicle Information and Cost Savings Act Amendments of 1976'."

SHORT TITLE

Section 1 of Pub. L. 92-513 provided: "That this Act [which enacted this chapter and provisions set out as notes under section 1981 of this title] may be cited as the 'Motor Vehicle Information and Cost Savings Act'."

SUBCHAPTER I—BUMPER STANDARDS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2002 of this title.

§ 1911. Congressional findings and declaration of purpose.

(a) The Congress finds that it is necessary to reduce the economic loss resulting from damage to passenger motor vehicles involved in motor vehicle accidents.

(b) It is the purpose of this subchapter to reduce the extent of such economic loss by providing for the promulgation and enforcement of bumper standards.

(Pub. L. 92-513, title I, § 101, Oct. 20, 1972, 86 Stat. 948.)

§ 1912. Promulgation of bumper standards

(a) Authority of Secretary; applicability to passenger motor vehicles and equipment

Subject to subsections (b) through (e) of this section, the Secretary by rule—

(1) shall promulgate bumper standards applicable to all passenger motor vehicles manufactured in or imported into the United States, and

(2) may promulgate bumper standards applicable to any item of passenger motor vehicle equipment so manufactured or imported,

except that such a rule shall not apply to any vehicle or item of passenger motor vehicle equipment which is intended solely for export (and is so labeled or tagged on the vehicle or equipment itself and on the outside of the container, if any) and which is exported.

(b) Criteria; conflict of standards with motor vehicle safety standards

(1) Any standard under subsection (a) of this section shall seek to obtain the maximum feasible reduction of costs to the public and to the consumer, taking into account:

(A) the cost of implementing the standard and the benefits attainable as the result of implementation of the standards;

(B) the effect of implementation of the standard on the cost of insurance and prospective legal fees and costs;

(C) savings in terms of consumer time and inconvenience; and

(D) considerations of health and safety, including emission standards.

(2) Bumper standards under this subchapter shall not conflict with motor vehicle safety standards promulgated under title I of the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1391 et seq.].

(c) Exemptions; attachment of detachable hitches

(1) In promulgating any bumper standard under this subchapter the Secretary may for good cause shown—

(A) exempt partially or completely any multi-purpose passenger motor vehicle; or

(B) exempt partially or completely any make, model, or class of passenger motor vehicle manufactured for a special use, if such standard would unreasonably interfere with the special use of such vehicle.

(2) To the maximum extent practicable, a bumper standard promulgated by the Secretary shall not preclude the attachment of detachable hitches.

(d) Effective date

The Secretary shall establish the effective date of any bumper standard when finally promulgating the standard, and such standard shall apply only to passenger motor vehicles or passenger motor vehicle equipment manufactured on or after such effective date. Such effective date shall not be—

(1) earlier than the date on which such standard is finally promulgated, or

(2) later than eighteen months after final promulgation of the standard unless the Secretary presents to Congress and publishes a detailed explanation of the reasons for such later effective date.

In no event shall the Secretary establish an effective date which is earlier than July 1, 1973.

(e) Rule making procedure; hearing

(1) All rules establishing, amending, or revoking a bumper standard under this subchapter shall be issued pursuant to section 553 of title 5, except that the Secretary shall give interested persons an opportunity for oral presentation of data, views, or arguments, and the opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(2) The Secretary may also conduct a hearing in accordance with such conditions or limitations as he may make applicable thereto, for the purpose of resolving any issue of fact material to the establishing, amending, or revoking of a bumper standard.

(Pub. L. 92-513, title I, § 102, Oct. 20, 1972, 86 Stat. 949.)

REFERENCES IN TEXT

The National Traffic and Motor Vehicle Safety Act of 1966, referred to in subsec. (b)(2), is Pub. L. 89-563, Sept. 9, 1966, 80 Stat. 718. Title I of the Act is classified to subchapter I (§ 1391 et seq.) of chapter 38 of this title. For complete classification of this Act to the Code, see Short Title note under section 1381 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1913, 1920 of this title.

§ 1913. Judicial review of rules establishing bumper standards

(a) Filing of petition; time for filing; jurisdiction; venue; transmittal of copy of petition to Secretary; filing of record of proceedings by Secretary

Any person who may be adversely affected by any rule issued under section 1912 of this title may at any time prior to sixty days after such rule is issued file a petition with the United States Court of Appeals for the District of Columbia, or any circuit wherein such person resides or has his principal place of business, for judicial review of such rule. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or his delegate. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based his rule, as provided in section 2112 of title 28.

(b) Additional evidence before Secretary; procedure; findings and recommendations of Secretary

If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced in a hearing, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his rule, with the return of such additional evidence.

(c) Applicability of sections 701 to 706 of title 5

Upon the filing of the petition referred to in subsection (a) of this section, the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5, and to grant appropriate relief as provided in such chapter.

(d) Review by Supreme Court

The judgment of the court affirming or setting aside, in whole or in part, any such rule of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(e) Availability of other remedies

The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law.

(Pub. L. 92-513, title I, § 103, Oct. 20, 1972, 86 Stat. 950.)

§ 1914. Powers of Secretary

(a) Conduct of hearings; subpena of witnesses and production of books, records, etc.; examination of relevant documentary evidence; orders requiring persons to file reports and answer specific questions; enforcement of subpenas and orders by district courts; contempt proceedings; payment of fees and mileage to witnesses

(1) For the purpose of carrying out the provisions of this subchapter, the Secretary, or on the authorization of the Secretary, any officer or employee of the Department of Transportation may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, or such officer or employee, deems advisable.

(2) In order to carry out the provisions of this subchapter, the Secretary or his duly authorized agent shall at all reasonable times have access to, and for the purposes of examination the right to copy, any documentary evidence of any person having materials or information relevant to any function of the Secretary under this subchapter.

(3) The Secretary is authorized to require, by general or special orders, any person to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary under

this subchapter. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe.

(4) Any of the district courts of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena or order of the Secretary or such officer or employee issued under paragraph (1) or paragraph (3) of this subsection, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(5) Witnesses summoned pursuant to this subsection shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) Disclosure of confidential information

All information reported to or otherwise obtained by the Secretary or his representative under this subchapter which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this subchapter or when relevant in any proceeding under this subchapter. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control from the duly authorized committees of the Congress.

(c) Requests for information from other Federal departments, agencies, and instrumentalities; compliance; detail of personnel by head of other Federal departments, agencies, and instrumentalities

(1) The Secretary is authorized to request from any department, agency, or instrumentality of the Government any information he deems necessary to carry out his functions under this subchapter; and each such department, agency, or instrumentality is authorized and directed to cooperate with the Secretary and to furnish such information to the Department of Transportation upon request made by the Secretary.

(2) The head of any Federal department, agency, or instrumentality is authorized to detail, on a reimbursable basis, any personnel of such department, agency, or instrumentality to assist in carrying out the duties of the Secretary under this subchapter.

(d) Conduct of research

The Secretary shall conduct such research as is necessary for him to carry out his functions under this subchapter.

(Pub. L. 92-513, title I, § 104, Oct. 20, 1972, 86 Stat. 950.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1919 of this title.

§ 1915. Determination of compliance by manufacturer with bumper standards

(a) Records, reports, and information from manufacturer; inspection and examination of vehicles and relevant documents; availability of vehicles and equipment for testing; negotiated price for test vehicles and equipment

Every manufacturer of passenger motor vehicles or of passenger motor vehicle equipment shall establish and maintain such records, make such reports, and provide such items and information (including the supplying of vehicles or equipment for testing) as the Secretary may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this subchapter and bumper standards prescribed pursuant to this subchapter and shall, upon request of an officer or employee duly designated by the Secretary, permit such officer or employee to inspect vehicles and appropriate books, papers, records, and documents relevant to determining whether such manufacturer has acted or is acting in compliance with this subchapter and bumper standards prescribed pursuant to this subchapter. Such manufacturer shall make available all such items and information in accordance with such reasonable rules as the Secretary may prescribe. Vehicles and equipment for testing shall be made available under this subsection at a negotiated price that does not exceed the manufacturer's cost.

(b) Entry into factory, warehouse, or establishment for reasonable inspection by duly designated officers, etc., of Secretary upon presentment to owner, operator, or agent in charge of credentials and written notice

For purposes of enforcement of this subchapter, officers or employees duly designated by the Secretary, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized (1) to enter any factory, warehouse, or establishment in which passenger motor vehicles or passenger motor vehicle equipment is manufactured, or held for introduction into interstate commerce or are held for sale after such introduction; and (2) to inspect such factory, warehouse, or establishment. Each such inspection shall be conducted at reasonable times and in a reasonable manner and shall be commenced and completed with reasonable promptness.

(c) Certification by manufacturer or distributor to distributor or dealer at time of delivery of vehicle or item of equipment of conformance to applicable Federal bumper standards; form of certification; nonapplicability to exports

(1) Every manufacturer or distributor of a passenger motor vehicle subject to a Federal bumper standard under this subchapter, or an item of passenger motor vehicle equipment subject to such a standard, shall furnish to the distributor or dealer at the time of delivery of such vehicle or items of equipment by such manufacturer or distributor a certification that each such vehicle or item of equipment conforms to applicable Federal bumper standards. The Secretary is authorized to issue rules prescribing the manner and form of such certification.

(2) Paragraph (1) of this subsection shall not apply to any passenger motor vehicle or item of passenger motor vehicle equipment which is intended solely for export (and is so labeled or tagged on the vehicle or equipment itself and on the outside of the container, if any) and which is exported.

(Pub. L. 92-513, title I, § 105, Oct. 20, 1972, 86 Stat. 952.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1916 of this title.

§ 1916. Prohibited acts

(a) Failure to comply with bumper standard, rule, recordkeeping, inspection, or certification requirements

No person shall—

(1) manufacture for sale, sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States, any passenger motor vehicle or passenger motor vehicle equipment manufactured on or after the date any applicable Federal bumper standard takes effect under this subchapter unless it is in conformity with such standard;

(2) fail to comply with any rule prescribed by the Secretary under this subchapter;

(3) fail to keep specified records or refuse access to or copying of records, or fail to make reports or provide items or information, or fail to refuse to permit entry or inspection, as required under this subchapter or any rule issued thereunder; or

(4)(A) fail to furnish a certificate required by section 1915(c) of this title, or (B) issue a certificate required by such subsection to the effect that a passenger motor vehicle or passenger motor vehicle equipment conforms to all applicable bumper standards, if such person knows, or in the exercise of due care has reason to know, that such certificate is false or misleading in a material respect.

(b) Exemptions from compliance with bumper standards; compliance of imported passenger motor vehicles or equipment with bumper standard; importation of passenger motor vehicle or equipment after first purchase in good faith for purpose other than resale

(1) Paragraph (1) of subsection (a) of this section shall not apply to the sale, the offer for sale, or the introduction or delivery for introduction in interstate commerce of any passenger motor vehicle or any passenger motor vehicle equipment after the first purchase of it in good faith for purposes other than resale. Nothing contained in this paragraph shall be construed as prohibiting the Secretary from promulgating any standard which requires vehicles or equipment to be manufactured so as to perform in accordance with the standard over a specified period of operation or use.

(2) Paragraph (1) of subsection (a) of this section shall not apply to any person who establishes that he did not have reason to know in the exercise of due care that the vehicle or item of equipment is not in conformity with applicable bumper standards or to any person who, prior to such first purchase, holds a certificate issued under section 1915(c) of this title to the effect that the vehicle or item of equipment conforms to all applicable Federal bumper standards, unless such person knows that such vehicle or such equipment does not so conform.

(3) A passenger motor vehicle or passenger motor vehicle equipment offered for importation in violation of paragraph (1) of subsection (a) of this section shall be refused admission into the United States under joint regulations issued by the Secretary of the Treasury and the Secretary; except that the Secretary of the Treasury and the Secretary may, by such regulations, provide for authorizing the importation of such vehicle or equipment into the United States upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such vehicle or such equipment will be brought into conformity with any applicable Federal bumper standard prescribed under this subchapter, or will be exported or abandoned to the United States.

(4) The Secretary of the Treasury and the Secretary may, by joint regulations, permit the importation of any passenger motor vehicle or passenger motor vehicle equipment after the first purchase of it in good faith for purposes other than resale.

(c) Liability under statutory or common law not affected by compliance with bumper standard

Compliance with any Federal bumper standard issued under this subchapter does not exempt any person from any liability under statutory or common law.

(Pub. L. 92-513, title I, § 106, Oct. 20, 1972, 86 Stat. 952.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1917 of this title.

§ 1917. Enforcement provisions

(a) Civil penalties; assessment and collection in civil action; separate nature of violations; maximum amount of penalties

Whoever violates subsection (a) of section 1916 of this title may be assessed a civil penalty of not to exceed $1,000 for each violation. Such penalty shall be assessed by the Secretary and collected in a civil action brought by the Attorney General or by the Secretary (with the concurrence of the Attorney General) by any of the Secretary's attorneys designated by the Secretary for such purpose. With respect to violations of paragraph (1) or (4) of subsection (a) of section 1916 of this title, a separate violation is committed with respect to each passenger motor vehicle or each item of passenger motor vehicle equipment which fails to conform to an applicable bumper standard or for which a certificate is not furnished or for which a misleading or false certificate is issued; except that the maximum civil penalty shall not exceed $800,000 for any related series of violations.

(b) Violations by persons or corporations subsequent to receipt of notice of noncompliance; liability; amount of penalties

(1) Any person who knowingly and willfully violates section 1916(a)(1) of this title after having received notice of noncompliance from

the Secretary shall be fined not more than $50,000 or be imprisoned not more than one year, or both.

(2) If a corporation violates section 1916(a)(1) of this title after having received notice of noncompliance from the Secretary, any individual director, officer, or agent of such corporation who knowingly and willfully authorized, ordered, or performed any of the acts or practices constituting in whole or in part such violation and who had knowledge of such notice from the Secretary shall be subject to penalties under this section in addition to the corporation.

(c) Injunctive relief to restrain violations of bumper standards; petition; jurisdiction; notice by Secretary to person against whom action is contemplated to present views and achieve compliance; criminal contempt proceedings; venue; subpenas for witnesses

(1) Upon petition by the Secretary or by the Attorney General on behalf of the United States, the United States district courts shall have jurisdiction for cause shown and subject to the provisions of rule 65(a) and (b) of the Federal Rules of Civil Procedure to restrain violations of this subchapter, or to restrain the sale, offer for sale, or the introduction or delivery for introduction in interstate commerce, or the importation into the United States, of any passenger motor vehicle or passenger motor vehicle equipment which is determined, prior to the first purchase of such vehicle or such equipment in good faith for purposes other than resale, not to conform to applicable bumper standards prescribed pursuant to this subchapter. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views, and, except in the case of a knowing and willful violation, shall afford him reasonable opportunity to achieve compliance. The failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief.

(2) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this subsection, which violation also constitutes a violation of this subchapter, trial shall be by the court, or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(3) Actions under paragraph (1) of this subsection and under subsection (a) of this section may be brought in the district wherein any act or transaction constituting the violation occurred, or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found.

(4) In any actions brought under paragraph (1) of this subsection and under subsection (a) of this section, subpenas for witnesses who are required to attend a United States district court may run into any other district.

(Pub. L. 92-513, title I, § 107, Oct. 20, 1972, 86 Stat. 953.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1947, 1948, 1990 of this title.

§ 1918. Civil action against manufacturer for failure to comply with bumper standards; persons entitled to bring suit; jurisdiction; venue; items of recovery; period of limitation

(a) Any owner of a passenger motor vehicle who sustains damages as a result of a motor vehicle accident because such vehicle did not comply with any applicable Federal bumper standard under this subchapter may bring a civil action against the manufacturer of that vehicle in the United States District Court for the District of Columbia, or in the United States district court for the judicial district in which that owner resides, to recover the amount of those damages, and in the case of any such successful action to recover that amount, costs and reasonable attorneys' fees shall be awarded to that owner.

(b) Any such action shall be brought within three years of the date of the motor vehicle accident.

(Pub. L. 92-513, title I, § 108, Oct. 20, 1972, 86 Stat. 955.)

§ 1919. Public access to information

Subject to section 1914(b) of this title, copies of any communications, documents, reports, or other information sent or received by the Secretary in connection with his duties under this subchapter shall be made available to any member of the public, upon request, at cost.

(Pub. L. 92-513, title I, § 109, Oct. 20, 1972, 86 Stat. 955.)

§ 1920. State and local bumper standards; establishment; enforcement; bumper standards for Federal, State, or locally-owned vehicles

(a) Except as provided in subsection (b) of this section, no State or political subdivision thereof shall have any authority to establish or enforce with respect to any passenger motor vehicle or passenger motor vehicle equipment offered for sale any bumper standard which is not identical to a Federal bumper standard.

(b)(1) Until a Federal bumper standard takes effect with respect to an aspect of performance of a passenger motor vehicle or of an item of passenger motor vehicle equipment, neither this chapter nor the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1381 et seq.] shall affect the authority of a State to continue to enforce any bumper standard which is applicable to the same aspect of performance of such vehicle or item of equipment, which is not in conflict with any Federal standard promulgated under title I of the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1391 et seq.], and which was in effect or had been promulgated on October 20, 1972.

(2) The Federal Government or the government of any State or political subdivision thereof may establish a bumper standard applicable to vehicles or equipment procured for its own

use which is not identical to the Federal standard under section 1912 of this title if such requirement imposes an additional or higher standard of performance.

(Pub. L. 92-513, title I, § 110, Oct. 20, 1972, 86 Stat. 955.)

References in Text

The National Traffic and Motor Vehicle Safety Act of 1966, referred to in subsec. (b)(1), is Pub. L. 89-563, Sept. 9, 1966, 80 Stat. 718, which is classified generally to chapter 38 (§ 1381 et seq.) of this title. Title I of the National Traffic and Motor Vehicle Safety Act of 1966, also referred to in subsec. (b)(1), is classified generally to subchapter I (§ 1391 et seq.) of chapter 38 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1381 of this title and Tables volume.

§ 1921. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter $125,000 for the fiscal year ending June 30, 1976; $75,000 for the period beginning July 1, 1976, and ending September 30, 1976; $130,000 for the fiscal year ending September 30, 1977; and $395,000 for the fiscal year ending September 30, 1978.

(Pub. L. 92-513, title I, § 111, Oct. 20, 1972, 86 Stat. 955; Pub. L. 94-364, title I, § 101, July 14, 1976, 90 Stat. 981.)

Amendments

1976—Pub. L. 94-364 substituted provisions authorizing appropriations of $125,000 for the fiscal year ending June 30, 1976, $75,000 for the period beginning July 1, 1976, and ending Sept. 30, 1976, $130,000 for the fiscal year ending Sept. 30, 1977, and $395,000 for the fiscal year ending Sept. 30, 1978, for provisions authorizing appropriations of $5,000,000 for the fiscal year ending June 30, 1973, $9,000,000 for the fiscal year ending June 30, 1974, and $10,000,000 for the fiscal year ending June 30, 1975.

§ 1922. Annual report

The Secretary shall report to the Congress and to the President not later than March 31 of each year on the progress in carrying out the purposes of this subchapter. Each such report shall contain a statement of the cost savings that have resulted from the administration of this subchapter, and include such recommendations for further legislative or other action as the Secretary determines may be appropriate.

(Pub. L. 92-513, title I, § 112, Oct. 20, 1972, 86 Stat. 955.)

SUBCHAPTER II—AUTOMOBILE CONSUMER INFORMATION STUDY

§ 1941. Consumer information study by Secretary

(a) Scope of study

During the first year after October 20, 1972, the Secretary shall conduct a comprehensive study and investigation of the methods for determining the following characteristics of passenger motor vehicles:

(1) The damage susceptibility of such vehicles.

(2) The degree of crashworthiness of such vehicles.

(3) The characteristics of such vehicles with respect to the ease of diagnosis and repair of mechanical and electrical systems which fail during use or which are damaged in motor vehicle accidents.

(b) Recommendations

After reviewing the methods for determining the characteristics enumerated in subsection (a) of this section, the Secretary shall make specific recommendations for the further development of existing methods or for the development of new methods.

(c) Dissemination of information to consumers

After the study has been completed the Secretary is authorized and directed to devise specific ways in which existing information and information to be developed relating to (1) the characteristics of passenger motor vehicles enumerated in subsection (a) of this section, or (2) vehicle operating costs dependent upon those characteristics (including information obtained pursuant to section 1945 of this title), can be communicated to consumers so as to be of benefit in their passenger motor vehicle purchasing decisions.

(d) Compilation and distribution of information

The Secretary shall compile the information described in subsection (c) of this section and furnish it to the public in a simple and readily understandable form in order to facilitate comparison among the various makes and models of passenger motor vehicles with respect to the characteristics enumerated in subsection (a) of this section. The Secretary may by rule require automobile dealers to distribute to prospective purchasers any information compiled pursuant to this subsection.

(e) Insurance premium rate comparisons; establishment of procedures requiring automobile dealers to distribute information to prospective purchasers

The Secretary, not later than February 1, 1975, shall by rule establish procedures requiring automobile dealers to distribute to prospective purchasers information developed by the Secretary and provided to the dealer which compares differences in insurance costs for different makes and models of passenger motor vehicles based upon differences in damage susceptibility and crashworthiness.

(Pub. L. 92-513, title II, § 201, Oct. 20, 1972, 86 Stat. 956; Pub. L. 94-364, title II, § 201, July 14, 1976, 90 Stat. 981.)

Amendments

1976—Subsec. (d). Pub. L. 94-364 added provision authorizing the Secretary to require dealers to distribute to prospective purchasers compiled information.

§ 1942. Appointment, compensation, etc., by Secretary of personnel, experts, consultants, and advisory committees to assist in study

In order to carry out his functions under this subchapter the Secretary is authorized to—

(1) appoint and fix the compensation of such employees as he deems necessary without regard to the provisions of title 5 governing appointment in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(2) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, but at rates for individuals not to exceed $100 per diem;

(3) contract with any person for the conduct of research and surveys and the preparation of reports; and

(4) appoint, without regard to the provisions of title 5 governing appointments in the competitive services, such advisory committees, representative of the divergent interests involved, as he deems appropriate for the purposes of consultation with and advice to the Secretary.

Members of advisory committees appointed under paragraph (4) of this section, other than those regularly employed by the Federal Government, while attending meetings of such committees or otherwise serving at the request of the Secretary, may be compensated at rates to be fixed by the Secretary but not exceeding $100 per day, and while away from home or regular place of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently. Members of such advisory committees shall, for the purposes of chapter 11 of title 18, be deemed to be special Government employees.

(Pub. L. 92-513, title II, § 202, Oct. 20, 1972, 86 Stat. 956.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in the text, are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in text, is set out under section 5332 of Title 5.

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law, see section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1943. Requests by Secretary for information from other Federal departments, etc.; compliance; detail of personnel by head of other Federal departments, etc.; reimbursement

(a) The Secretary may request from any department, agency, or independent instrumentality of the Government any information he deems necessary to carry out his functions under this subchapter; and each such department, agency, or independent instrumentality is authorized and directed to cooperate with the Secretary and furnish such information to the Department of Transportation upon request made by the Secretary.

(b) The head of any Federal department, agency, or independent instrumentality may detail, on a reimbursable basis, any personnel of such department, agency, or independent instrumentality to assist in carrying out the duties of the Secretary under this subchapter.

(Pub. L. 92-513, title II, § 102, Oct. 20, 1972, 86 Stat. 957.)

§ 1944. Powers of Secretary

(a) Conduct of hearings; subpena of witnesses and production of books, records, etc

For the purpose of carrying out the provisions of this subchapter, the Secretary, or on the authorization of the Secretary, any officer or employee of the Department of Transportation may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, or such officer or employee, deems advisable.

(b) Examination of relevant documentary evidence

In order to carry out the provisions of this subchapter, the Secretary or his duly authorized agent shall at all reasonable times have access to, and for the purposes of examination the right to copy, any documentary evidence of any person having materials or information relevant to the study authorized by this subchapter.

(c) Orders requiring persons to file reports and answer specific questions

The Secretary may require, by general or special orders, any person to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary under this subchapter. Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe.

(d) Enforcement of subpenas and orders by district courts; contempt proceedings

Any United States district court within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena or order of the Secretary or such officer or employee issued under subsection (a) or subsection (c) of this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) Payment of fees and mileage to witnesses

Witnesses summoned pursuant to this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(f) Disclosure of confidential information

Any information which is reported to or otherwise obtained by the Secretary or such officer or employee under this section and which contains or relates to a trade secret or other matter referred to in section 1905 of title 18 shall not be disclosed except to other officers or employees of the Federal Government for their use in carrying out this subchapter. Nothing in the preceding sentence shall authorize the withholding of information by the Secretary (or any officer or employee under his control) from the duly authorized committees of the Congress.

(Pub. L. 92-513, title II, § 204, Oct. 20, 1972, 86 Stat. 957.)

§ 1945. Insurance reports and information

(a) Duty of insurers of passenger motor vehicles

Insurers of passenger motor vehicles, or their designated agents, shall, upon request by the Secretary, make such reports and furnish such information as the Secretary may reasonably require to enable him to carry out the purposes of this subchapter.

(b) Scope of reports and information

Such reports and information may include, but shall not be limited to—

(1) accident claim data relating to the type and extent of physical damage and the cost of remedying the damage according to make, model, and model year of passenger motor vehicle, and

(2) accident claim data relating to the type and extent of personal injury according to make, model, and model year of passenger motor vehicle.

(c) Considerations governing request by Secretary for reports and information

In determining the reports and information to be furnished pursuant to subsections (a) and (b) of this section, the Secretary shall—

(1) consider the cost of preparing and furnishing such reports and information;

(2) consider the extent to which such reports and information will contribute to carrying out the purposes of this subchapter; and

(3) consult with such State and insurance regulatory agencies and other agencies and associations, both public and private, as he deems appropriate.

(d) Voluntary nature of compliance by insurer with request of Secretary

The Secretary shall, to the extent possible, obtain such reports and information from the insurers of passenger motor vehicles on a voluntary basis.

(e) Damage susceptibility, crashworthiness, and damage repair and personal injury cost information

Every insurer of passenger motor vehicles shall, upon request by the Secretary, furnish him a description of the extent to which the insurance rates or premiums charged by the insurer for passenger motor vehicles are affected by the damage susceptibility, crashworthiness, and cost of damage repair and personal injury involved relating to each of the various makes and models of passenger motor vehicles. Such insurer shall also furnish the Secretary upon request such information as may be available to such insurer reflecting the effect of the damage susceptibility, crashworthiness, and cost of damage repair and personal injury involved relating to each of the various makes and models of passenger motor vehicles upon risk incurred by insuring each such make and model.

(f) Dissemination of information by Secretary

The Secretary shall not, in disseminating any information received pursuant to this section, disclose the name of, or other identifying information about, any person who may be an insured, a claimant, a passenger, an owner, a driver, an injured person, a witness, or otherwise involved in any motor vehicle crash or collision unless the Secretary has the consent of the persons so named or otherwise identified.

(g) Time and manner of furnishing information

The information required by this section shall be furnished at such times and in such manner as the Secretary shall prescribe by regulation or otherwise.

(Pub. L. 92-513, title II, § 205, Oct. 20, 1972, 86 Stat. 958.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1941 of this title.

§ 1946. Prohibited acts

No person shall fail or refuse (1) to furnish the Secretary with the data or information requested by him under this subchapter, or (2) to comply with rules prescribed by the Secretary under this subchapter.

(Pub. L. 92-513, title II, § 206, Oct. 20, 1972, 86 Stat. 959.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1947, 1948 of this title.

§ 1947. Injunctive relief to restrain violations of information requirements; petition; jurisdiction; notice by Secretary to person against whom action is contemplated for opportunity to present views and achieve compliance; venue; subpenas for witnesses

Upon petition by the Attorney General on behalf of the United States, the United States district courts shall have jurisdiction, for cause shown and subject to the provisions of rule 65(a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of section 1946 of this title. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views and shall afford him reasonable opportunity to achieve compliance. The failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief. Paragraphs (3) and (4) of section 1917(c) of this title shall apply to any action under this section in the same manner as they apply to actions under section 1917 of this title.

(Pub. L. 92-513, title II, § 207, Oct. 20, 1972, 86 Stat. 959.)

CODIFICATION

"Paragraphs (3) and (4) of section 1917(c) of this title", referred to in text, read in the original "paragraphs (3) and (4) of section 107(b) of this title". Section 107(b), which is classified to section 1917(b) of this title, was enacted without any pars. (3) and (4). Therefore, section 107(b) has been translated editorially as section 1917(c) as the probable intent of Congress.

§ 1948. Civil penalties for violations of information requirements

(a) Separate nature of violations; maximum amount of penalties

Whoever violates section 1946 of this title shall be subject to a civil penalty of not to exceed $1,000 for each violation. A violation of section 1946 of this title shall constitute a separate violation with respect to each failure or refusal to comply with a requirement thereunder; except that the maximum civil penalty under this subsection shall not exceed $400,000 for any related series of violations.

(b) Compromise of penalty by Secretary; determination of amount of penalty or amount of compromised penalty; deduction of amount of penalty

Any civil penalty under this section may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(c) Venue; subpenas for witnesses

Paragraphs (3) and (4) of section 1917(c) of this title shall apply to any action under this section in the same manner as they apply to actions under section 1917 of this title.

(Pub. L. 92-513, title II, § 208, Oct. 20, 1972, 86 Stat. 959.)

CODIFICATION

"Paragraphs (3) and (4) of section 1917(c) of this title", referred to in subsec. (c), read in the original "paragraphs (3) and (4) of section 107(b) of this title". Section 107(b), which is classified to section 1917(b) of this title, was enacted without any pars. (3) and (4). Therefore, section 107(b) has been translated editorially as section 1917(c) as the probable intent of Congress.

§ 1949. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter $1,875,000 for the fiscal year ending June 30, 1976; $500,000 for the period beginning July 1, 1976, and ending September 30, 1976; $3,385,000 for the fiscal year ending September 30, 1977; and $3,375,000 for the fiscal year ending September 30, 1978.

(Pub. L. 92-513, title II, § 209, Oct. 20, 1972, 86 Stat. 959; Pub. L. 94-364, title II, § 202, July 14, 1976, 90 Stat. 981.)

AMENDMENTS

1976—Pub. L. 94-364 substituted provisions authorizing appropriations of $1,875,000 for the fiscal year ending June 30, 1976, $500,000 for the period beginning July 1, 1976, and ending Sept. 30, 1976, $3,385,000 for the fiscal year ending Sept. 30, 1977, and $3,375,000 for the fiscal year ending Sept. 30, 1978, for provisions authorizing appropriations of $3,000,000 per fiscal year for the fiscal year ending June 30, 1973, and for each of the two succeeding fiscal years.

SUBCHAPTER III—DIAGNOSTIC INSPECTION DEMONSTRATION PROJECTS

PART A—STATE PROGRAMS

AMENDMENTS

1974—Pub. L. 93-492, title III, § 301(a)(1), Oct. 27, 1974, 88 Stat. 1485, added heading "Part A—State Programs".

§ 1961. Powers of Secretary

(a) Establishment of demonstration projects; commencement of inspections

The Secretary shall establish motor vehicle diagnostic inspection demonstration projects, inspections under which shall commence not later than January 1, 1974.

(b) Grants and technical assistance to States; consultations with Administrator of Environmental Protection Agency

To carry out the program under this part, the Secretary shall—

(1) make grants in accordance with subsection (c) of this section and furnish technical assistance to States; and

(2) consult with the Administrator of the Environmental Protection Agency.

(c) Conduct or supervision by States of demonstration projects; nonprofit performance of diagnostic inspection services; limitations on demonstration projects

(1) Any demonstration project under this part shall be conducted by, or under supervision of, a State in accordance with the application of the State submitted under section 1963 of this title, and may provide for the performance of diagnostic inspection services either by public agencies or by private organizations, but no person may perform diagnostic inspection services for profit under any such program.

(2) Not less than five nor more than ten demonstration projects may be assisted by the Secretary under this part. No more than 50 per centum of the projects so assisted may permit diagnostic inspection services to be performed under the project by any person who also provides automobile repair services or who is affiliated with, controls, is controlled by, or is under common control with, any person who provides automobile repair services.

(Pub. L. 92-513, title III, § 301, Oct. 20, 1972, 86 Stat. 959; Pub. L. 93-492, title III, § 301(a)(2), Oct. 27, 1974, 88 Stat. 1485.)

AMENDMENTS

1974—Subsecs. (b), (c). Pub. L. 93-492 substituted "this part" for "this subchapter" wherever appearing.

§ 1962. Eligibility of States for grants or other assistance; determination by Secretary of requirements for demonstration projects

(a) A State may be eligible for grants or other assistance under this part if the Secretary determines on the basis of an application by such State that such State will undertake a motor vehicle diagnostic inspection demonstration project which meets the requirements of subsection (b) of this section.

(b)(1) A motor vehicle diagnostic inspection demonstration project shall be designed, established, and operated to conduct periodic safety inspections of motor vehicles pursuant to criteria established by the Secretary by regulation and emission inspections pursuant to criteria established by the Secretary by regulation in consultation with the Administrator of the Environmental Protection Agency.

(2) Such project shall require an additional inspection of any motor vehicle subject to the demonstration project (as determined by the Secretary)—

(A) whenever the title to such motor vehicle is transferred to another person unless the transfer is for the purpose of resale; and

(B) whenever such motor vehicle sustains substantial damage to any safety-related or emission-related system or subsystem, as prescribed by the Secretary.

(3) To the greatest extent practicable, such inspections shall be conducted so as to provide specific technical diagnoses of each motor vehicle inspected in order to facilitate correction of any component failing inspection.

(4) A demonstration project shall provide for reinspection of vehicles which initially fail to meet the safety and emission standards established for the project after repair.

(5) Each project shall provide to the Secretary information and data relating to the development of diagnostic testing equipment designed to maximize the interchangeability and interface capability of test equipment and vehicles, and information, and data relating to the costs and benefits of such projects, including information and data relating to vehicle-in-use standards, vehicle designs which facilitate or hinder inspection and repair, the standardization of diagnostic systems and test equipment, the capability of the motor vehicle repair industry to correct diagnosed deficiencies or malfunctions and the costs of such repairs, the relative costs and benefits of the project, the efficiency of facility designs employed, recommendations as to feasible reject levels which may be employed, in any such project and such other information and data as the Secretary may require.

(Pub. L. 92-513, title III, § 302, Oct. 20, 1972, 86 Stat. 960; Pub. L. 93-492, title III, § 301(a)(2), Oct. 27, 1974, 88 Stat. 1485.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93-492 substituted "this part" for "this subchapter".

§ 1963. Implementation of grants or other assistance to States

(a) Time, manner, and contents of application

A grant or other assistance under this part may be obtained upon an application by a State at such time, in such manner, and containing such information as the Secretary prescribes, including information respecting categories of expenditures by the State from financial assistance under this part.

(b) Limitation on amount of grant; date for eligibility of inspection costs; retention of equipment by State; manner of payments

Upon the approval of any such application, the Secretary may make a grant to the State to pay each fiscal year an amount not in excess of 90 per centum of those categories of expenditures for establishing and operating its project which the Secretary approves. Federal financial assistance under this part shall not be available with respect to costs of inspection carried out after September 30, 1977, under such a project. Any equipment purchased with Federal funds may be retained by a State for its inspection activities following the demonstration project with the approval of the Secretary. Payments under this subsection may be made in advance, in installments, or by way of reimbursement.

(c) Minimum use of grants for diagnostic inspection demonstration projects

The Secretary shall approve such applications and take such other action as may be necessary to provide that at least three motor vehicle diagnostic inspection demonstration projects receive financial assistance under grants under this part through September 30, 1977.

(Pub. L. 92-513, title III, § 303, Oct. 20, 1972, 86 Stat. 961; Pub. L. 93-492, title III, § 301(a)(2), Oct. 27, 1974, 88 Stat. 1485; Pub. L. 94-364, title III, § 301, July 14, 1976, 90 Stat. 981.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-364, § 301(1), substituted "September 30, 1977" for "June 30, 1976".

Subsec. (c). Pub. L. 94-364, § 301(2), added subsec. (c).

1974—Pub. L. 93-492 substituted "this part" for "this subchapter" wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1961 of this title.

PART B—SPECIAL DEMONSTRATION PROJECTS

AMENDMENTS

1974—Pub. L. 93-492, title III, § 301(a)(4), Oct. 27, 1974, 88 Stat. 1485, added heading "Part B—Special Demonstration Projects".

§ 1963a. Duties of Secretary

(a) Establishment of special demonstration project; purposes of motor vehicle inspection

The Secretary shall establish a special motor vehicle diagnostic inspection demonstration project to assist in the research, rapid development, and evaluation of advanced inspection, analysis, and diagnostic equipment suitable for use by any State in any high volume inspection facility designed to assess the safety, noise, emissions, and fuel efficiency of motor vehicles. Motor vehicles shall be inspected at such project for purposes of (1) evaluating the conditions of parts, components, and repairs which may be necessary to comply with State and Federal safety, noise, and emissions standards, and (2) assisting the motor vehicle owner in achieving optimum fuel and maintenance economy.

(b) Evaluation of equipment available for use in small automotive repair establishments; report to Congress

The Secretary shall evaluate, to the extent feasible, the existing diagnostic analysis and test equipment available for use in small automotive repair establishments and report to the Congress, within two years after July 14, 1976, as to the scope of research and development required to make such equipment compatible with State motor vehicle inspection and diagnostic equipment. The report shall assess the extent to which private industry can supply small automotive repair shops with low cost test equipment which can be used to monitor compliance with Federal safety, noise, and emissions standards promulgated by the Secretary, the Administrator of the Environmental Protection Agency, and by State or local regulatory agencies.

(c) Participation of certain Federal Administrators

In carrying out this section, the Secretary shall provide—

(1) the Administrator of the Environmental Protection Agency with an opportunity to assist, to the extent such assistance relates to noise and emissions, in the establishment of the special motor vehicle diagnostic inspection demonstration project under subsection (a) of this section and the evaluation of existing diagnostic and test equipment under subsection (b) of this section; and

(2) the Administrator of the Federal Energy Administration with an opportunity to assist, to the extent such assistance relates to fuel efficiency, in the establishment of such project and the evaluation of such equipment.

(Pub. L. 92-513, title III, § 311, as added Pub. L. 93-492, title III, § 301(a)(4) Oct. 27, 1974, 88 Stat. 1485, and amended Pub. L. 94-364, title III, § 302, July 14, 1976, 90 Stat. 982.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-364 designated existing provisions as subsec. (a) and, as so designated, substituted "research, rapid development, and evaluation" for "rapid development and evaluation" and "for use by any State in any high volume inspection facility designed to assess the safety, noise, emissions, and fuel efficiency of motor vehicles" for "for use by the States in standardized high volume inspection facilities and to evaluate the repair characteristics of motor vehicles", and substituted provision relating to the purposes for which vehicles will be inspected, for provision that project be designed to facilitate evaluation of repair characteristics by small automotive repair garages.

Subsecs. (b), (c). Pub. L. 94-364 added subsecs. (b) and (c).

PART C—AUTHORIZATION OF APPROPRIATIONS

AMENDMENTS

1974—Pub. L. 93-492, title III, § 301(a)(4), Oct. 27, 1974, 88 Stat. 1485, added heading "Part C—Authorization of Appropriations".

§ 1964. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter $5,000,000 for the fiscal year ending June 30, 1976; $500,000 for the period beginning July 1, 1976, and ending September 30, 1976; $7,500,000 for the fiscal year ending September 30, 1977; and $4,400,000 for the fiscal year ending September 30, 1978. Sums appropriated under this section shall remain available until expended.

(Pub. L. 92-513, title III, § 321, formerly § 304, Oct. 20, 1972, 86 Stat. 961, renumbered Pub. L. 93-492, title III, § 301(a)(3), Oct. 27, 1974, 88 Stat. 1485, and amended Pub. L. 94-364, title III, § 303, July 14, 1976, 90 Stat. 982.)

AMENDMENTS

1976—Pub. L. 94-364 substituted provisions authorizing to be appropriated $5,000,000 for the fiscal year ending June 30, 1976, $500,000 for the period beginning July 1, 1976 and ending Sept. 30, 1976, $7,500,000 for the fiscal year ending Sept. 30, 1977, and $4,400,000 for the fiscal year ending Sept. 30, 1978, for provisions authorizing to be appropriated $15,000,000 for the fiscal year ending June 30, 1973, $25,000,000 for the fiscal year ending June 30, 1974, and $35,000,000 for the fiscal year ending June 30, 1975, eliminated provision that not more than 20 percent of the amount appropriated for any fiscal year may be granted for projects in any one State, and added provision that sums appropriated shall remain available until expended.

SUBCHAPTER IV—ODOMETER REQUIREMENTS

§ 1981. Congressional findings and declaration of purpose

The Congress hereby finds that purchasers, when buying motor vehicles, rely heavily on the odometer reading as an index of the condition and value of such vehicle; that purchasers are entitled to rely on the odometer reading as an accurate reflection of the mileage actually traveled by the vehicle; that an accurate indication of the mileage traveled by a motor vehicle assists the purchaser in determining its safety and reliability; and that motor vehicles move in the current of interstate and foreign commerce or affect such commerce. It is therefore the purpose of this subchapter to prohibit tampering with odometers on motor vehicles and to establish certain safeguards for the protection of purchasers with respect to the sale of motor vehicles having altered or reset odometers.

(Pub. L. 92-513, title IV, § 401, Oct. 20, 1972, 86 Stat. 961.)

EFFECTIVE DATE

Section 419, formerly § 412, of Pub. L. 92-513, as renumbered by Pub. L. 94-364, § 408(1), July 14, 1976, 90 Stat. 984, provided that: "This title (other than section 408(a)) [this subchapter other than section 1988(a) of this title] shall take effect ninety calendar days following the date of enactment of this Act [Oct. 20, 1972]. Section 408(a) [section 1988(a) of this title] shall take effect on the date of enactment of this Act [Oct. 20, 1972]."

REPORT BY SECRETARY ON ODOMETER RELIABILITY AND SECURITY; RECOMMENDATIONS

Section 420, formerly § 413, of Pub. L. 92-513, as renumbered by Pub. L. 94-364, § 408(1), July 14, 1976, 90 Stat. 984, provided that: "One year after the date of enactment of this Act [Oct. 20, 1972], the Secretary shall report to the Congress and to the President on the extent to which the reliability of odometers can be improved, on the technical feasibility of producing odometers which are tamper proof, and on the Secretary's plans and recommendations for future action."

§ 1982. Definitions

As used in this subchapter—

(1) The term "dealer" means any person who has sold 5 or more motor vehicles in the past 12 months to purchasers who in good faith purchase such vehicles for purposes other than resale.

(2) The term "distributor" means any person who has sold 5 or more vehicles in the past 12 months for resale.

(3) The term "odometer" means an instrument for measuring and recording the actual distance a motor vehicle travels while in operation; but shall not include any auxiliary odometer designed to be reset by the operator of the motor vehicle for the purpose of recording mileage on trips.

(4) The term "repair and replacement" means to restore to a sound working condition by replacing the odometer or any part thereof or by correcting what is inoperative.

(5) The term "transfer" means to change ownership by purchase, gift, or any other means.

(Pub. L. 92-513, title IV, § 402, Oct. 20, 1972, 86 Stat. 961; Pub. L. 94-364, title IV, § 401, July 14, 1976, 90 Stat. 983.)

AMENDMENTS

1976—Pub. L. 94-364 added pars. (1) and (2) and redesignated former pars. (1) to (3) as (3) to (5), respectively.

§ 1983. Devices causing odometer to register other than true mileage driven prohibited

No person shall advertise for sale, sell, use, or install or cause to be installed, any device which causes an odometer to register any mileage other than the true mileage driven. For purposes of this section, the true mileage driven is that mileage driven by the vehicle as registered by the odometer within the manufacturer's designed tolerance.

(Pub. L. 92-513, title IV, § 403, Oct. 20, 1972, 86 Stat. 962; Pub. L. 94-364, title IV, § 402, July 14, 1976, 90 Stat. 983.)

AMENDMENTS

1976—Pub. L. 94-364 substituted "No person shall advertise for sale, sell, use, or install or cause to be installed," for "It is unlawful for any person to advertise for sale, to sell, to use, or to install or to have installed,".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1986 of this title.

§ 1984. Change of mileage indicated on odometer prohibited

No person shall disconnect, reset, or alter or cause to be disconnected, reset, or altered, the odometer of any motor vehicle with intent to change the number of miles indicated thereon.

(Pub. L. 92-513, title IV, § 404, Oct. 20, 1972, 86 Stat. 962; Pub. L. 94-364, title IV, § 403, July 14, 1976, 90 Stat. 983.)

AMENDMENTS

1976—Pub. L. 94-364 substituted "No person shall disconnect, reset, or alter or cause to be disconnected, reset, or altered," for "It is unlawful for any person or his agent to disconnect, reset, or alter".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1986 of this title.

§ 1985. Operation of motor vehicle with knowledge of disconnected or nonfunctional odometer prohibited

No person shall, with intent to defraud, operate a motor vehicle on any street or highway knowing that the odometer of such vehicle is disconnected or nonfunctional.

(Pub. L. 92-513, title IV, § 405, Oct. 20, 1972, 86 Stat. 962; Pub. L. 94-364, title IV, § 404, July 14, 1976, 90 Stat. 983.)

AMENDMENTS

1976—Pub. L. 94-364 substituted "No person shall, with intent to defraud, operate" for "It is unlawful for any person with the intent to defraud to operate".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1986 of this title.

§ 1986. Conspiracy to violate odometer requirements

No person shall conspire with any other person to violate section 1983, 1984, 1985, 1987, or 1988 of this title.

(Pub. L. 92-513, title IV, § 406, Oct. 20, 1972, 86 Stat. 962.)

§ 1987. Lawful service, repair, or replacement of odometer; adjustment of mileage and notice of adjustment; failure to adjust mileage or affix notice of adjustment and removal or alteration of notice with fraudulent intent prohibited

(a) Nothing in this subchapter shall prevent the service, repair, or replacement of an odometer, provided the mileage indicated thereon remains the same as before the service, repair, or replacement. Where the odometer is incapable of registering the same mileage as before such service, repair, or replacement, the odometer shall be adjusted to read zero and a notice in writing shall be attached to the left door frame of the vehicle by the owner or his agent specifying the mileage prior to repair or replacement of the odometer and the date of which it was repaired or replaced.

(b)(1) No person shall fail to adjust an odometer or affix a notice regarding such adjustment as required pursuant to subsection (a) of this section.

(2) No person shall, with intent to defraud, remove or alter any notice affixed to a motor vehicle pursuant to subsection (a) of this section.

(Pub. L. 92-513, title IV, § 407, Oct. 20, 1972, 86 Stat. 962; Pub. L. 94-364, title IV, § 405, July 14, 1976, 90 Stat. 983.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-364, § 405(1), (2), designated existing provisions as subsec. (a) and, as so designated, struck out provision relating to removal or alteration of notice.

Subsec. (b). Pub. L. 94-364, § 405(3), added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1986 of this title.

§ 1988. Disclosure requirements upon transfer of ownership of motor vehicle

(a) Promulgation of rules

Not later than 90 days after October 20, 1972, the Secretary shall prescribe rules requiring any transferor to give the following written disclosure to the transferee in connection with the transfer of ownership of a motor vehicle:

(1) Disclosure of the cumulative mileage registered on the odometer.

(2) Disclosure that the actual mileage is unknown, if the odometer reading is known to the transferor to be different from the number of miles the vehicle has actually traveled.

Such rules shall prescribe the manner in which information shall be disclosed under this section and in which such information shall be retained.

(b) Violations of rules and giving false statements to transferees prohibited

No transferor shall violate any rule prescribed under this section or give a false statement to a transferee in making any disclosure required by such rule.

(c) Acceptance of incomplete written disclosure by transferees acquiring ownership for resale prohibited

No transferee who, for purposes of resale, acquires ownership of a motor vehicle shall accept any written disclosure required by any rule prescribed under this section if such disclosure is incomplete.

(Pub. L. 92-513, title IV, § 408, Oct. 20, 1972, 86 Stat. 962; Pub. L. 94-364, title IV, § 406, July 14, 1976, 90 Stat. 983.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-364 substituted "No transferor shall violate any rule prescribed under this section or give a false statement" for "It shall be a violation of this section for any transferor to violate any rules under this section or to knowingly give a false statement".

Subsec. (c). Pub. L. 94-364 added subsec. (c).

EFFECTIVE DATE

Section, except subsec. (a), effective 90 calendar days following Oct. 20, 1972, with subsec. (a) to take effect on Oct. 20, 1972, see section 419 of Pub. L. 92-513, set out as a note under section 1981 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1986 of this title.

§ 1989. Civil actions to enforce liability for violations of odometer requirements; amount of damages; jurisdiction; period of limitation

(a) Any person who, with intent to defraud, violates any requirement imposed under this subchapter shall be liable in an amount equal to the sum of—

(1) three times the amount of actual damages sustained or $1,500, whichever is the greater; and

(2) in the case of any successful action to enforce the foregoing liability, the costs of the action together with reasonable attorney fees as determined by the court.

(b) An action to enforce any liability created under subsection (a) of this section, may be brought in a United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises.

(Pub. L. 92-513, title IV, § 409, Oct. 20, 1972, 86 Stat. 963.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1990a of this title.

§ 1990. Injunctive relief to restrain violations; jurisdiction; venue; service of process; subpoenas for witnesses

(a) The United States district courts shall have jurisdiction, for cause shown and subject to the provisions of rule 65(a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this subchapter, or rules, regulations, or orders issued thereunder. Such actions may be brought by the Attorney General in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found, is an inhabitant, or transacts business. In any action brought under this section, process may be served on a defendant in any other district in which the defendant resides or may be found.

(b) In any action brought under this subchapter, subpenas for witnesses who are required to attend a United States district court may run into any other district.

(Pub. L. 92-513, title IV, § 410, Oct. 20, 1972, 86 Stat. 963; Pub. L. 94-364, title IV, § 407, July 14, 1976, 90 Stat. 984.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-364 substituted "The United States district courts shall have jurisdiction" for "Upon petition by the Attorney General on behalf of the United States, the United States district courts shall have jurisdiction" and "violations of this subchapter, or rules, regulations, or orders issued thereunder" for "violations of this subchapter" and substituted provisions relating to district where actions may be brought by Attorney General and where process may be served, for provisions relating to the giving of notice, and the affording of opportunity to be heard by Secretary to person against whom injunction is sought and provisions relating to failure to give such notice or to afford such opportunity to be heard as not precluding the granting of relief.

Subsec. (b). Pub. L. 94-364 substituted provision relating to the running of subpenas for witnesses into other districts, for provision which made section 1917(c)(3) and (4) of this title applicable to actions under this section.

§ 1990a. State action to restrain violation or recover damages; period of limitation and jurisdiction of federal and state courts

(a) If any person violates any requirement imposed under this subchapter, the chief law enforcement officer of the State in which such violation occurred may bring any action to—

(1) restrain such violation; or

(2) recover amounts for which such person is liable under section 1989 of this title to

each person on whose behalf such action is brought.

(b) Any action under subsection (a) of this section may be brought within two years from the date on which the liability arises—

(1) without regard to the amount in controversy, in any appropriate district court of the United States, or

(2) in any court of competent jurisdiction of any State.

(Pub. L. 92-513, title IV, § 411, as added Pub. L. 94-364, title IV, § 408(2), July 14, 1976, 90 Stat. 984.)

§ 1990b. Civil penalty; maximum amounts; assessment, collection, and compromise; determination of amount of compromised penalty

(a) Any person who commits any act or causes to be done any act that violates any provision of this subchapter or omits to do any act or causes to be omitted any act that is required by any such provision shall be subject to a civil penalty not to exceed $1,000 for each such violation. A violation of any such provision shall, for purposes of this section, constitute a separate violation with respect to each motor vehicle or device involved, except that the maximum civil penalty shall not exceed $100,000 for any related series of violations.

(b) Any civil penalty under this section shall be assessed by the Secretary and collected in a civil action brought by the Attorney General on behalf of the United States. Before referral of civil penalty claims to the Attorney General, civil penalties may be compromised by the Secretary after affording the person charged with a violation of any section of this subchapter an opportunity to present views and evidence in support thereof to establish that the alleged violation did not occur. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(Pub. L. 92-513, title IV, § 412, as added Pub. L. 94-364, title IV, § 408(2), July 14, 1976, 90 Stat. 984.)

§ 1990c. Criminal penalties; liability of director, etc., of corporation

(a) Any person who knowingly and willfully commits any act or causes to be done any act that violates any provision of this subchapter or knowingly and willfully omits to do any act or causes to be omitted any act that is required by any such provision shall be fined not more than $50,000 or imprisoned not more than one year, or both.

(b) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of any section of this subchapter shall be subject to penalties under this section without regard to any penalties to which that corporation may be subject under subsection (a) of this section.

(Pub. L. 92-513, title IV, § 413, as added Pub. L. 94-364, title IV, § 408(2), July 14, 1976, 90 Stat. 985.)

§ 1990d. Inspections and investigations

(a) Authorization of Secretary; cooperation with State and local officials; power of designated officers or employees to enter, impound, and inspect; compensation for impounding of motor vehicles or equipment

(1) The Secretary is authorized to conduct any inspection or investigation necessary to enforce this subchapter or any rules, regulations, or orders issued thereunder. Information obtained indicating noncompliance with this subchapter or any rules, regulations, or orders issued thereunder, may be referred to the Attorney General for investigative consideration. In making investigations under this paragraph, the Secretary shall cooperate with appropriate State and local officials to the greatest extent possible consistent with the purposes of this subsection.

(2) For purposes of carrying out paragraph (1) of this subsection, officers or employees duly designated by the Secretary, upon stating their purpose and presenting appropriate credentials and written notice (which notice may consist of an administrative inspection warrant) to the owner, operator, or agent in charge, are authorized at reasonable times and in a reasonable manner—

(A) to enter (i) any factory, warehouse, establishment, or other commercial premises in or on which motor vehicles or items of motor vehicle equipment are manufactured, held for shipment or sale, maintained, or repaired, or (ii) any noncommercial premises in or on which the Secretary reasonably believes that there is a motor vehicle or item of motor vehicle equipment that has been the object of a violation of this subchapter;

(B) to impound, for a period not to exceed 72 hours, for purposes of inspection, any motor vehicle or item of motor vehicle equipment that the Secretary reasonably believes to have been the object of a violation of this subchapter; and

(C) to inspect any factory, warehouse, establishment, premises, vehicle, or equipment referred to in subparagraph (A) or (B) of this paragraph.

Each inspection or impoundment under this paragraph shall be commenced and completed with reasonable promptness.

(3) Whenever, under the authority of paragraph (2)(B) of this subsection, the Secretary impounds for the purpose of inspection any motor vehicle (other than a vehicle subject to part II of the Interstate Commerce Act [49 U.S.C. 301 et seq.]) or any item of motor vehicle equipment, he shall pay reasonable compensation to the owner of such vehicle or equipment to the extent that such inspection or impounding results in the denial of the use of the vehicle or equipment to its owner or in the reduction in value of the vehicle or equipment.

(b) Recordkeeping requirements

For the purpose of enabling the Secretary to determine whether any dealer or distributor has acted or is acting in compliance with this subchapter or any rules, regulations, or orders issued thereunder, each dealer and distributor shall—

(1) maintain such records as the Secretary may reasonably require to make such determination;

(2) permit an officer or employee duly designated by the Secretary, upon request of such officer or employee, to inspect appropriate books, papers, records, and documents relevant to making such determination; and

(3) provide such officer or employee information from records required to be maintained under this subsection as the Secretary finds necessary for such determination if the Secretary (A) provides the reason or purpose for requiring such information, and (B) identifies to the fullest extent practicable such information.

Nothing in this subsection authorizes the Secretary to require a dealer or distributor to provide information on a regular periodic basis.

(c) Administrative proceedings; access to and copying of documentary evidence; written reports and answers; judicial enforcement of subpoenas or orders; witness fees and mileage

(1) For the purpose of carrying out the provisions of this subchapter, the Secretary or, with the authorization of the Secretary, any officer or employee of the Department of Transportation may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, or such officer or employee, deems advisable.

(2) In order to carry out the provisions of this subchapter, the Secretary or his duly authorized agent shall at all reasonable times have access to, and for the purposes of examination the right to copy, any documentary evidence of any person having materials or information relevant to any function of the Secretary under this subchapter.

(3) Except to the extent inconsistent with the last sentence of subsection (b) of this section, the Secretary is authorized to require, by general or special orders, any person to file, in such form as the Secretary may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary under this subchapter. Such reports and answers shall be under oath or otherwise, and shall be filed with the Secretary within such reasonable period as the Secretary may prescribe.

(4) Any of the district courts of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena or order of the Secretary or such officer or employee issued under paragraph (1) or (3) of this subsection, issue an order requiring compliance therewith, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(5) Witnesses summoned pursuant to this subsection shall be paid the same fees and mileage which are paid witnesses in the courts of the United States.

(d) Disclosure of confidential information

All information reported to or otherwise obtained by the Secretary or his representative under this subchapter, which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this subchapter or when relevant in any proceeding under this subchapter. Nothing in this section shall authorize the withholding of information by the Secretary or any officer or employee under his control from the duly authorized committees of the Congress.

(Pub. L. 92-513, title IV, § 414, as added Pub. L. 94-364, title IV, § 408(2), July 14, 1976, 90 Stat. 985.)

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in subsec. (a)(3), is act Feb. 4, 1887, ch. 104, 24 Stat. 379. Part II of the Interstate Commerce Act was added by act Aug. 9, 1935, ch. 498, 49 Stat. 543, and is classified generally to chapter 8 (§ 301 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of Title 49 and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1990e, 1990f of this title.

§ 1990e. Administrative warrants; necessity; issuance and execution; inventory of impounded property; filing of papers

(a) A warrant under this section shall be required for any entry or administrative inspection (including impoundment of motor vehicles or motor vehicle equipment) authorized by section 1990d of this title, except if such entry or inspection is—

(1) with the consent of the owner, operator, or agent in charge of the factory, warehouse, establishment, or premises;

(2) in situations involving inspection of motor vehicles where there is reasonable cause to believe that the mobility of the motor vehicle makes it impracticable to obtain a warrant;

(3) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking;

(4) for access to and examination of books, records, and any other documentary evidence pursuant to section 1990d(c)(2) of this title; or

(5) in any other situations where a warrant is not constitutionally required.

(b) Issuance and execution of administrative inspection warrants shall be as follows:

(1) Any judge of the United States or of a State court of record, or any United States magistrate, may, within his territorial jurisdiction, and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by section 1990d of this title and of impoundment of motor vehicles or motor vehicle equipment appropriate to

such inspections. For the purposes of this section, the term "probable cause" means a valid public interest in the effective enforcement of this subchapter or regulations issued thereunder sufficient to justify administrative inspections of the area, factory, warehouse, establishment, premises, or motor vehicle, or contents thereof, in the circumstances specified in the application for the warrant.

(2) A warrant shall be issued only upon an affidavit of an officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is a reasonable basis for believing they exist, he shall issue a warrant identifying the area, factory, warehouse, establishment, premises, or motor vehicle to be inspected, the purpose of such inspection, and, where appropriate, the type of property to be inspected, if any. The warrant shall—

(A) identify the items or type of property to be impounded, if any;

(B) be directed to a person authorized under section 1990d of this title to execute it;

(C) state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support thereof;

(D) command the person to whom it is directed to inspect the area, factory, warehouse, establishment, premises, or motor vehicle identified for the purpose specified, and, where appropriate, shall direct the impoundment of the property specified;

(E) direct that it be served during the hours specified in it; and

(F) designate the judge or magistrate to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within 10 days of its date unless, upon a showing by the Secretary of a need therefor, the judge or magistrate allows additional time in the warrant. If property is impounded pursuant to a warrant, the person executing the warrant shall give the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person making such inventory, and shall be verified by the person executing the warrant. The judge or magistrate, upon request, shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge or magistrate who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection therewith and shall file them with the clerk of the district court of the United States for the judicial district in which the inspection was made.

(Pub. L. 92-513, title IV, § 415, as added Pub. L. 94-364, title IV, § 408(2), July 14, 1976, 90 Stat. 987.)

§ 1990f. Compliance with inspection and investigation requirements

No person shall fail to comply with the requirements of section 1990d of this title to maintain records, make reports, provide information, permit access to or copying of records, permit entry or inspection, or permit impounding.

(Pub. L. 92-513, title IV, § 416, as added Pub. L. 94-364, title IV, § 408(2), July 14, 1976, 90 Stat. 988.)

§ 1990g. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter $450,000 for the fiscal year ending June 30, 1976; $100,000 for the period beginning July 1, 1976, and ending September 30, 1976; $650,000 for the fiscal year ending September 30, 1977; and $562,000 for the fiscal year ending September 30, 1978.

(Pub. L. 92-513, title IV, § 417, as added Pub. L. 94-364, title IV, § 408(2), July 14, 1976, 90 Stat. 989.)

§ 1991. State odometer requirements

This subchapter does not—

(1) annul, alter, or affect the laws of any State with respect to the disconnecting, altering, or tampering with odometers with the intent to defraud, or

(2) exempt any person subject to the provisions of this subchapter from complying with such laws,

except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

(Pub. L. 92-513, title IV, § 418, formerly § 411, Oct. 20, 1972, 86 Stat. 963, renumbered Pub. L. 94-364, title IV, § 408(1), July 14, 1976, 90 Stat. 984.)

SUBCHAPTER V—IMPROVING AUTOMOTIVE EFFICIENCY

PART A [1]—AUTOMOTIVE FUEL ECONOMY

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1901 of this title.

§ 2001. Definitions

For purposes of this part:

(1) The term "automobile" means any 4-wheeled vehicle propelled by fuel which is manufactured primarily for use on public streets, roads, and highways (except any vehicle operated exclusively on a rail or rails), and

(A) which is rated at 6,000 lbs. gross vehicle weight or less, or

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[1] So in original. There are no other parts in this subchapter.

(B) which—

(i) is rated at more than 6,000 lbs. gross vehicle weight but less than 10,000 lbs. gross vehicle weight,

(ii) is a type of vehicle for which the Secretary determines, by rule, average fuel economy standards under this part are feasible, and

(iii) is a type of vehicle for which the Secretary determines, by rule, average fuel economy standards will result in significant energy conservation, or is a type of vehicle which the Secretary determines is substantially used for the same purposes as vehicles described in subparagraph (A) of this paragraph.

The Secretary may prescribe such rules as may be necessary to implement this paragraph.

(2) The term "passenger automobile" means any automobile (other than an automobile capable of off-highway operation) which the Secretary determines by rule is manufactured primarily for use in the transportation of not more than 10 individuals.

(3) The term "automobile capable of off-highway operation" means any automobile which the Secretary determines by rule—

(A) has a significant feature (other than 4-wheel drive) which is designed to equip such automobile for off-highway operation, and

(B) either—

(i) is a 4-wheel drive automobile, or

(ii) is rated at more than 6,000 pounds gross vehicle weight.

(4) The term "average fuel economy" means average fuel economy, as determined under section 2003 of this title.

(5) The term "fuel" means gasoline and diesel oil. The Secretary may, by rule, include any other liquid fuel or any gaseous fuel within the meaning of the term "fuel" if he determines that such inclusion is consistent with the need of the Nation to conserve energy.

(6) The term "fuel economy" means the average number of miles traveled by an automobile per gallon of gasoline (or equivalent amount of other fuel) consumed, as determined by the EPA Administrator in accordance with procedures established under section 2003(d) of this title.

(7) The term "average fuel economy standard" means a performance standard which specifies a minimum level of average fuel economy which is applicable to a manufacturer in a model year.

(8) The term "manufacturer" means any person engaged in the business of manufacturing automobiles. The Secretary shall prescribe rules for determining, in cases where more than one person is the manufacturer of an automobile, which person is to be treated as the manufacturer of such automobile for purposes of this part.

(9) The term "manufacturer" (except for purposes of section 2002(c) of this title) means to produce or assemble in the customs territory of the United States, or to import.

(10) The term "import" means to import into the customs territory of the United States.

(11) The term "model type" means a particular class of automobile as determined, by rule, by the EPA Administrator, after consultation and coordination with the Secretary.

(12) The term "model year", with reference to any specific calendar year, means a manufacturer's annual production period (as determined by the EPA Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term "model year" means the calendar year.

(13) The term "Secretary" means the Secretary of Transportation.

(14) The term "EPA Administrator" means the Administrator of the Environmental Protection Agency.

(Pub. L. 92-513, title V, § 501, as added Pub. L. 94-163, title III, § 301, Dec. 22, 1975, 89 Stat. 901.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2004, 2006, 2012 of this title; title 42 section 6291.

§ 2002. Average fuel economy standards

(a) Standards for passenger vehicles manufactured after 1977; review of standards; report to Congress; standards for passenger automobiles manufactured from 1981 through 1984; amendment of standards

(1) Except as otherwise provided in paragraph (4) or in subsection (c) or (d) of this section, the average fuel economy for passenger automobiles manufactured by any manufacturer in any model year after model year 1977 shall not be less than the number of miles per gallon established for such model year under the following table:

Model year:	*Average fuel economy standard (in miles per gallon)*
1978	18.0.
1979	19.0.
1980	20.0.
1981	Determined by Secretary under paragraph (3) of this subsection.
1982	Determined by Secretary under paragraph (3) of this subsection.
1983	Determined by Secretary under paragraph (3) of this subsection.
1984	Determined by Secretary under paragraph (3) of this subsection.
1985 and thereafter	27.5.

(2) Not later than January 15 of each year, beginning in 1977, the Secretary shall transmit to each House of Congress, and publish in the Federal Register, a review of average fuel economy standards under this part. The review required to be transmitted not later than January 15, 1979, shall include a comprehensive analysis of the program required by this part. Such analysis shall include an assessment of the ability of manufacturers to meet the average fuel economy standard for model year 1985 as specified in paragraph (1) of this subsection, and any legislative recommendations the Secretary

or the EPA Administrator may have for improving the program required by this part.

(3) Not later than July 1, 1977, the Secretary shall prescribe, by rule, average fuel economy standards for passenger automobiles manufactured in each of the model years 1981 through 1984. Any such standard shall apply to each manufacturer (except as provided in subsection (c) of this section), and shall be set for each such model year at a level which the Secretary determines (A) is the maximum feasible average fuel economy level, and (B) will result in steady progress toward meeting the average fuel economy standard established by or pursuant to this subsection for model year 1985.

(4) The Secretary may, by rule, amend the average fuel economy standard specified in paragraph (1) for model year 1985, or for any subsequent model year, to a level which he determines is the maximum feasible average fuel economy level for such model year, except that any amendment which has the effect of increasing an average fuel economy standard to a level in excess of 27.5 miles per gallon, or of decreasing any such standard to a level below 26.0 miles per gallon, shall be submitted to the Congress in accordance with section 551 of the Energy Policy and Conservation Act [42 U.S.C. 6421], and shall not take effect if either House of the Congress disapproves such amendment in accordance with the procedures specified in such section.

(5) For purposes of considering any modification which is submitted to the Congress under paragraph (4), the 5 calendar days specified in section 551(f)(4)(A) of the Energy Policy and Conservation Act [42 U.S.C. 6421(f)(4)(A)] shall be lengthened to 20 calendar days, and the 15 calendar days specified in section 551(c) and (d) of such Act [42 U.S.C. 6421(c) and (d)] shall be lengthened to 60 calendar days.

(b) Standards for other than passenger automobiles

The Secretary shall, by rule, prescribe average fuel economy standards for automobiles which are not passenger automobiles and which are manufactured by any manufacturer in each model year which begins more than 30 months after December 22, 1975. Such rules may provide for separate standards for different classes of such automobiles (as determined by the Secretary), and shall[1] be set at a level which the Secretary determines is the maximum feasible average fuel economy level which such manufacturers are able to achieve in each model year to which this subsection applies. Any standard applicable to a model year under this subsection shall be prescribed at least 18 months prior to the beginning of such model year.

(c) Exemptions for manufacturers of limited number of cars

On application of a manufacturer who manufactured (whether or not in the United States) fewer than 10,000 passenger automobiles in the second model year preceding the model year for which the application is made, the Secretary may, by rule, exempt such manufacturer from subsection (a) of this section. An application for such an exemption shall be submitted to the Secretary, and shall contain such information as the Secretary may require by rule. Such exemption may only be granted if the Secretary determines that the average fuel economy standard otherwise applicable under subsection (a) of this section is more stringent than the maximum feasible average fuel economy level which such manufacturer can attain. The Secretary may not issue exemptions with respect to a model year unless he establishes, by rule, alternative average fuel economy standards for passenger automobiles manufactured by manufacturers which receive exemptions under this subsection. Such standards may be established for an individual manufacturer, for all automobiles to which this subsection applies, or for such classes of such automobiles as the Secretary may define by rule. Each such standard shall be set at a level which the Secretary determines is the maximum feasible average fuel economy level for the manufacturers to which the standard applies. An exemption under this subsection shall apply to a model year only if the manufacturer manufactures (whether or not in the United States) fewer than 10,000 passenger automobiles in such model year.

(d) Application for modification of standards

(1) Any manufacturer may apply to the Secretary for modification of an average fuel economy standard applicable under subsection (a) of this section to such manufacturer for model year 1978, 1979, or 1980. Such application shall contain such information as the Secretary may require by rule, and shall be submitted to the Secretary within 24 months before the beginning of the model year for which such modification is requested.

(2)(A) If a manufacturer demonstrates and the Secretary finds that—

(i) a Federal standards fuel economy reduction is likely to exist for such manufacturer for the model year to which the application relates, and

(ii) such manufacturer applied a reasonably selected technology,

the Secretary shall, by rule, reduce the average fuel economy standard applicable under subsection (a) of this section to such manufacturer by the amount of such manufacturer's Federal standards fuel economy reduction, rounded off to the nearest one-tenth mile per gallon (in accordance with rules of the Secretary). To the maximum extent practicable, prior to making a finding under this paragraph with respect to an application, the Secretary shall request, and the EPA Administrator shall supply, test results collected pursuant to section 2003(d) of this title for all automobiles covered by such application.

(B)(i) If the Secretary does not find that a Federal standards fuel economy reduction is likely to exist for a manufacturer who filed an application under paragraph (1), he shall deny the application of such manufacturer.

(ii) If the Secretary—

(I) finds that a Federal standards fuel economy reduction is likely to exist for a manufacturer who filed an application under paragraph (1), and

(II) does not find that such manufacturer applied a reasonably selected technology, the average fuel economy standard applicable under subsection (a) of this section to such manufacturer shall, by rule, be reduced by an amount equal to the Federal standards fuel economy reduction which the Secretary finds would have resulted from the application of a reasonably selected technology.

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[1] So in original. Probably should be "such standards shall".

(3) For purposes of this subsection:

(A) The term "reasonably selected technology" means a technology which the Secretary determines it was reasonable for a manufacturer to select, considering (i) the Nation's need to improve the fuel economy of its automobiles, and (ii) the energy savings, economic costs, and lead-time requirements associated with alternative technologies practicably available to such manufacturer.

(B) The term "Federal standards fuel economy reduction" means the sum of the applicable fuel economy reductions determined under subparagraph (C).

(C) The term "applicable fuel economy reduction" means a number of miles per gallon equal to—

(i) the reduction in a manufacturer's average fuel economy in a model year which results from the application of a category of Federal standards applicable to such model year, and which would not have occurred had Federal standards of such category applicable to model year 1975 remained the only standards of such category in effect, minus

(ii) 0.5 mile per gallon.

(D) Each of the following is a category of Federal standards;

(i) Emissions standards under section 202 of the Clean Air Act [42 U.S.C. 1857f-1] and emissions standards applicable by reason of section 209(b) of such Act [42 U.S.C. 1857f-6a(b)].

(ii) Motor vehicle safety standards under the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1381 et seq.].

(iii) Noise emission standards under section 6 of the Noise Control Act of 1972 [42 U.S.C. 4905].

(iv) Property loss reduction standards under subchapter I of this chapter.

(E) In making the determination under this subparagraph,[1] the Secretary (in accordance with such methods as he shall prescribe by rule) shall assume a production mix for such manufacturer which would have achieved the average fuel economy standard for such model year had standards described in subparagraph (D) applicable to model year 1975 remained the only standards in effect.

(4) The Secretary may, for the purposes of conducting a proceeding under this subsection, consolidate one or more applications filed under this subsection.

(e) Determination of maximum feasible average fuel economy

For purposes of this section, in determining maximum feasible average fuel economy, the Secretary shall consider—

(1) technological feasibility;

(2) economic practicability;

(3) the effect of other Federal motor vehicle standards on fuel economy; and

(4) the need of the Nation to conserve energy.

(f) Amendment of average fuel economy standards

(1) The Secretary may, by rule, from time to time, amend any average fuel economy standard prescribed under subsection (a)(3), (b), or (c) of this section, so long as such standard, as amended, meets the requirements of subsection (a)(3), (b), or (c) of this section, as the case may be.

(2) Any amendment prescribed under this section which has the effect of making any average fuel economy standard more stringent shall be—

(A) promulgated, and

(B) if required by paragraph (4) of subsection (a) of this section, submitted to the Congress,

at least 18 months prior to the beginning of the model year to which such amendment will apply.

(g) Application of other laws

Proceedings under subsection (a)(4) or (d) of this section shall be conducted in accordance with section 553 of title 5 except that interested persons shall be entitled to make oral as well as written presentations. A transcript shall be taken of any oral presentations.

(Pub. L. 92-513, title V, § 502, as added Pub. L. 94-163, title III, § 301, Dec. 22, 1975, 89 Stat. 902.)

References in Text

The National Traffic and Motor Vehicle Safety Act of 1966, referred to in subsec. (d)(3)(D)(ii), is Pub. L. 89-563, Sept. 9, 1966, 80 Stat. 718, which is classified to chapter 38 (§ 1381 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1381 of this title and Tables volume.

Section Referred to in Other Sections

This section is referred to in sections 2001, 2003, 2004, 2005, 2007, 2008, 2010 of this title.

§ 2003. Calculation of average fuel economy

(a) Method of calculation

(1) Average fuel economy for purposes of section 2002(a) and (c) of this title shall be calculated by the EPA Administrator by dividing—

(A) the total number of passenger automobiles manufactured in a given model year by a manufacturer, by

(B) a sum of terms, each term of which is a fraction created by dividing—

(i) the number of passenger automobiles of a given model type manufactured by such manufacturer in such model year, by

(ii) the fuel economy measured for such model type.

(2) Average fuel economy for purposes of section 2002(b) of this title shall be calculated in accordance with rules of the EPA Administrator.

(b) Automobile categories

(1) In calculating average fuel economy under subsection (a)(1) of this section, the EPA Administrator shall separate the total number of

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[1] So in original, probably should be "subsection,".

passenger automobiles manufactured by a manufacturer into the following two categories:

(A) Passenger automobiles which are domestically manufactured by such manufacturer (plus, in the case of model year 1978 and model year 1979, passenger automobiles which are within the includable base import volume of such manufacturer).

(B) Passenger automobiles which are not domestically manufactured by such manufacturer (and which, in the case of model year 1978 and model year 1979, are not within the includable base import volume of such manufacturer).

The EPA Administrator shall calculate the average fuel economy of each such separate category, and each such category shall be treated as if manufactured by a separate manufacturer for purposes of this part.

(2) For purposes of this subsection:

(A) The term "includable base import volume", with respect to any manufacturer in model year 1978 or 1979, as the case may be, is a number of passenger automobiles which is the lesser of—

(i) the manufacturer's base import volume, or

(ii) the number of passenger automobiles calculated by multiplying—

(I) the quotient obtained by dividing such manufacturer's base import volume by such manufacturer's base base[1] production volume, times

(II) the total number of passenger automobiles manufactured by such manufacturer during such model year.

(B) The term "base import volume" means one-half the sum of—

(i) the total number of passenger automobiles which were not domestically manufactured by such manufacturer during model year 1974 and which were imported by such manufacturer during such model year, plus

(ii) 133 percent of the total number of passenger automobiles which were not domestically manufactured by such manufacturer during the first 9 months of model year 1975 and which were imported by such manufacturer during such 9-month period.

(C) The term "base production volume" means one-half the sum of—

(i) the total number of passenger automobiles manufactured by such manufacturer during model year 1974, plus

(ii) 133 percent of the total number of passenger automobiles manufactured by such manufacturer during the first 9 months of model year 1975.

(D) For purposes of subparagraphs (B) and (C) of this paragraph any passenger automobile imported during model year 1976, but prior to July 1, 1975, shall be deemed to have been manufactured (and imported) during the first 9 months of model year 1975.

(E) An automobile shall be considered domestically manufactured in any model year if at least 75 percent of the cost to the manufacturer of such automobile is attributable to value added in the United States or Canada, unless the assembly of such automobile is completed in Canada and such automobile is not imported into the United States prior to the expiration of 30 days following the end of such model year. The EPA Administrator may prescribe rules for purposes of carrying out this subparagraph.

(F) The fuel economy of each passenger automobile which is imported by a manufacturer in model year 1978 or 1979, as the case may be, and which is not domestically manufactured by such manufacturer, shall be deemed to be equal to the average fuel economy of all such passenger automobiles.

(c) Definition of "automobiles manufactured"

Any reference in this part to automobiles manufactured by a manufacturer shall be deemed—

(1) to include all automobiles manufactured by persons who control, are controlled by, or are under common control with, such manufacturer; and

(2) to exclude all automobiles manufactured (within the meaning of paragraph (1)) during a model year by such manufacturer which are exported prior to the expiration of 30 days following the end of such model year.

(d) Testing and calculation procedures

(1) Fuel economy for any model type shall be measured, and average fuel economy of a manufacturer shall be calculated, in accordance with testing and calculation procedures established by the EPA Administrator, by rule. Procedures so established with respect to passenger automobiles (other than for purposes of section 2006 of this title) shall be the procedures utilized by the EPA Administrator for model year 1975 (weighted 55 percent urban cycle, and 45 percent highway cycle), or procedures which yield comparable results. Procedures under this subsection, to the extent practicable, shall require that fuel economy tests be conducted in conjunction with emissions tests conducted under section 206 of the Clean Air Act [42 U.S.C. 1857f-5]. The EPA Administrator shall report any measurements of fuel economy and any calculations of average fuel economy to the Secretary.

(2) The EPA Administrator shall, by rule, determine that quantity of any other fuel which is the equivalent of one gallon of gasoline.

(3) Testing and calculation procedures applicable to a model year, and any amendment to such procedures (other than a technical or clerical amendment), shall be promulgated not less than 12 months prior to the model year to which such procedures apply.

(e) Rounding off of measurements of fuel economy

For purposes of this part (other than section 2006 of this title), any measurement of fuel economy of a model type, and any calculation of average fuel economy of a manufacturer, shall be rounded off to the nearest one-tenth mile per gallon (in accordance with rules of the EPA Administrator).

(f) Consultation and coordination by Administrator with Secretary

The EPA Administrator shall consult and coordinate with the Secretary in carrying out his duties under this section.

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[1] So in original.

(Pub. L. 92-513, title V, § 503, as added Pub. L. 94-163, title III, § 301, Dec. 22, 1975, 89 Stat. 906.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2001, 2002, 2004, 2005, 2008 of this title.

§ 2004. Judicial review

(a) Review of rules in courts of appeals

Any person who may be adversely affected by any rule prescribed under section 2001, 2002, 2003, or 2006 of this title may, at any time prior to 60 days after such rule is prescribed (or in the case of an amendment submitted to each House of the Congress under section 2002(a)(4) of this title, at any time prior to 60 days after the expiration of the 60-day period specified in section 2002(a)(5) of this title), file a petition in the United States Court of Appeals for the District of Columbia, or for any circuit wherein such person resides or has his principal place of business, for judicial review of such rule. A copy of the petition shall be forthwith transmitted by the clerk of such court to the officer who prescribed the rule. Such officer shall thereupon cause to be filed in such court the written submissions and other materials in the proceeding upon which such rule was based. Upon the filing of such petition, the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter. Findings of the Secretary under section 2002(d) of this title shall be set aside by the court on review unless such findings are supported by substantial evidence.

(b) Additional submissions

If the petitioner applies to the court in a proceeding under subsection (a) of this section for leave to make additional submissions, and shows to the satisfaction of the court that such additional submissions are material and that there were reasonable grounds for the failure to make such submissions in the administrative proceeding, the court may order the Secretary or the EPA Administrator, as the case may be to provide additional opportunity to make such submissions. The Secretary or the EPA Administrator, as the case may be, may modify or set aside the rule involved or prescribe a new rule by reason of the additional submissions, and shall file any such modified or new rule in the court, together with such additional submissions. The court shall thereafter review such new or modified rule.

(c) Finality of determination; review by United States Supreme Court

The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(d) Remedy in addition to other remedies provided by law

The remedies provided for in this section shall be in addition to, and not in lieu of, any other remedies provided by law.

(Pub. L. 92-513, title V, § 504, as added Pub. L. 94-163, title III, § 301, Dec. 22, 1975, 89 Stat. 908.)

§ 2005. Information and reports

(a) Reports by manufacturers; time; contents

(1) Each manufacturer shall submit a report to the Secretary during the 30-day period preceding the beginning of each model year after model year 1977, and during the 30-day period beginning on the 180th day of each such model year. Each such report shall contain (A) a statement as to whether such manufacturer will comply with average fuel economy standards under section 2002 of this title applicable to the model year for which such report is made; (B) a plan which describes the steps the manufacturer has taken or intends to take in order to comply with such standards; and (C) such other information as the Secretary may require.

(2) Whenever a manufacturer determines that a plan submitted under paragraph (1) which he stated was sufficient to insure compliance with applicable average fuel economy standards is not sufficient to insure such compliance, he shall submit a report to the Secretary containing a revised plan which specifies any additional measures which such manufacturer intends to take in order to comply with such standards, and a statement as to whether such revised plan is sufficient to insure such compliance.

(3) The Secretary shall prescribe rules setting forth the form and content of the reports required under paragraphs (1) and (2).

(b) Hearings; evidence

(1) For the purpose of carrying out the provisions of this part, the Secretary or the EPA Administrator, or their duly designated agents, may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require, by subpena, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memorandums, contracts, agreements, or other records as the Secretary, the EPA Administrator, or such agents deem advisable. The Secretary or the EPA Administrator may require, by general or special orders that any person—

(A) file, in such form as the Secretary or EPA Administrator may prescribe, reports or answers in writing to specific questions relating to any function of the Secretary or the EPA Administrator under this part, and

(B) provide the Secretary, the EPA Administrator, or their duly designated agents, access to (and for the purpose of examination, the right to copy) any documentary evidence of such person which is relevant to any function of the Secretary or the EPA Administrator under this part.

Such reports and answers shall be made under oath or otherwise, and shall be filed with the Secretary or the EPA Administrator within such reasonable period as either may prescribe.

(2) The district courts of the United States for a judicial district in the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a duly authorized subpena or order of the Secretary, the

EPA Administrator, or a duly designated agent of either, issued under paragraph (1), issue an order requiring compliance with such subpena or order. Any failure to obey such an order of the court may be treated by such court as a contempt thereof.

(3) Witnesses summoned pursuant to this subsection shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(c) Tests, reports, etc., which may be required of manufacturers

(1) Every manufacturer shall establish and maintain such records, make such reports, conduct such tests, and provide such items and information as the Secretary or the EPA Administrator may, by rule, reasonably require to enable the Secretary or the EPA Administrator to carry out their duties under this part and under any rules prescribed pursuant to this part. Such manufacturer shall, upon request of a duly designated agent of the Secretary or the EPA Administrator who presents appropriate credentials, permit such agent, at reasonable times and in a reasonable manner, to enter the premises of such manufacturer to inspect automobiles and appropriate books, papers, records, and documents. Such manufacturer shall make available all of such items and information in accordance with such reasonable rules as the Secretary or the EPA Administrator may prescribe.

(2) The district courts of the United States may, if a manufacturer refuses to accede to any rule or reasonable request made under paragraph (1), issue an order requiring compliance with such requirement or request. Any failure to obey such an order of the court may be treated by such court as a contempt thereof.

(d) Disclosure of information to public

(1) The Secretary and the EPA Administrator shall each disclose any information obtained under this part (other than section 2003(d) of this title) to the public in accordance with section 552 of title 5, except that information may be withheld from disclosure under subsection (b)(4) of such section only if the Secretary or the EPA Administrator, as the case may be, determines that such information, if disclosed, would result in significant competitive damage. Any matter described in section 552(b)(4) [of title 5] relevant to any administrative or judicial proceeding under this part may be disclosed in such proceeding.

(2) Measurements and calculations under section 2003(d) of this title shall be made available to the public in accordance with section 552 of title 5 without regard to subsection (b) of such section.

(Pub. L. 92-513, title V, § 505, as added Pub. L. 94-163, title III, § 301, Dec. 22, 1975, 89 Stat. 908.)

§ 2006. Labeling

(a) Label required on automobile; contents

(1) Except as otherwise provided in paragraph (2), each manufacturer shall cause to be affixed, and each dealer shall cause to be maintained, on each automobile manufactured in any model year after model year 1976, in a prominent place, a label—

(A) indicating—

(i) the fuel economy of such automobile,

(ii) the estimated annual fuel cost associated with the operation of such automobile, and

(iii) the range of fuel economy of comparable automobiles (whether or not manufactured by such manufacturer),

as determined in accordance with rules of the EPA Administrator,

(B) containing a statement that written information (as described in subsection (b)(1) of this section) with respect to the fuel economy of other automobiles manufactured in such model year (whether or not manufactured by such manufacturer) is available from the dealer in order to facilitate comparison among the various model types, and

(C) containing any other information authorized or required by the EPA Administrator which relates to information described in subparagraph (A) or (B).

(2) With respect to automobiles—

(A) for which procedures established in the EPA and FEA Voluntary Fuel Labeling Program for Automobiles exist on December 22, 1975, and

(B) which are manufactured in model year 1976 and at least 90 days after December 22, 1975,

each manufacturer shall cause to be affixed, and each dealer shall cause to be maintained, in a prominent place, a label indicating the fuel economy of such automobile, in accordance with such procedures.

(3) The form and content of the labels required under paragraphs (1) and (2), and the manner in which such labels shall be affixed, shall be prescribed by the EPA Administrator by rule. The EPA Administrator may permit a manufacturer to comply with this paragraph by permitting such manufacturer to disclose the information required under this subsection on the label required by section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232).

(b) Booklet containing fuel economy data; distribution by administrator

(1) The EPA Administrator shall compile and prepare a simple and readily understandable booklet containing data on fuel economy of automobiles manufactured in each model year. Such booklet shall also contain information with respect to estimated annual fuel costs, and may contain information with respect to geographical or other differences in estimated annual fuel costs. The Administrator of the Federal Energy Administration shall publish and distribute such booklets.

(2) The EPA Administrator, not later than July 31, 1976, shall prescribe rules requiring dealers to make available to prospective purchasers information compiled by the EPA Administrator under paragraph (1).

(c) Violations

(1) A violation of subsection (a) shall be treated as a violation of section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232). For purposes of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] (other than sections

5(m) and (18) [15 U.S.C. 45(m) and 57a], a violation of subsection (a) shall be treated as an unfair or deceptive act or practice in or affecting commerce.

(2) As used in this section, the term "dealer" has the same meaning as such term has in section 2(e) of the Automobile Information Disclosure Act (15 U.S.C. 1231(e)) except that in applying such term to this section, the term "automobile" has the same meaning as such term has in section 2001(1) of this title.

(d) Creation of warranties

Any disclosure with respect to fuel economy or estimated annual fuel cost which is required to be made under the provisions of this section shall not create an express or implied warranty under State or Federal law that such fuel economy will be achieved, or that such cost will not be exceeded, under conditions of actual use.

(e) Consultation by Administrator with other agency personnel

In carrying out his duties under this section, the EPA Administrator shall consult with the Federal Trade Commission, the Secretary, and the Federal Energy Administrator.

(Pub. L. 92-513, title V, § 506, as added Pub. L. 94-163, title III, § 301, Dec. 22, 1975, 89 Stat. 910.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (c)(1), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2003, 2004, 2007, 2009 of this title.

§ 2007. Unlawful conduct

The following conduct is unlawful:

(1) the failure of any manufacturer to comply with any average fuel economy standard applicable to such manufacturer under section 2002 of this title (other than section 2002(b) of this title),

(2) the failure of any manufacturer to comply with any average fuel economy standard applicable to such manufacturer under section 2002(b) of this title, or

(3) the failure of any person (A) to comply with any provision of this part applicable to such person (other than section 2002, 2006(a), 2010, or 2011 of this title), or (B) to comply with any standard, rule, or order applicable to such person which is issued pursuant to such a provision.

(Pub. L. 92-513, title V, § 507, as added Pub. L. 94-163, title III, § 301, Dec. 22, 1975, 89 Stat. 911.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2008 of this title.

§ 2008. Civil penalty

(a) Penalty for violations; credit against penalty

(1) If average fuel economy calculations reported under section 2003(d) of this title indicate that any manufacturer has violated section 2007(1) or (2) of this title, then (unless further measurements of fuel economy, further calculations of average fuel economy, or other information indicates there is no violation of section 2007(1) or (2) of this title) the Secretary shall commence a proceeding under paragraph (2) of this subsection. The results of such further measurements, further calculations, and any such other information, shall be published in the Federal Register.

(2) If, on the record after opportunity for agency hearing, the Secretary determines that such manufacturer has violated section 2007(1) or (2) of this title, or that any person has violated section 2007(3) of this title, the Secretary shall assess the penalties provided for under subsection (b) of this section. Any interested person may participate in any proceeding under this paragraph.

(3)(A)(i) Whenever the average fuel economy of the passenger automobiles manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard established under section 2002(a) or (c) of this title (determined without regard to any adjustment under section 2002(d) of this title), such manufacturer shall be entitled to a credit, calculated under clause (ii), which shall be—

(I) deducted from the amount of any civil penalty which has been or may be assessed against such manufacturer for a violation of section 2007(1) of this title occurring in the model year immediately prior to the model year in which such manufacturer exceeds such applicable average fuel economy standard, and

(II) to the extent that such credit is not deducted pursuant to subclause (I), deducted from the amount of any civil penalty assessed against such manufacturer for a violation of section 2007(1) of this title occurring in the model year immediately following the model year in which such manufacturer exceeds such applicable average fuel economy standard.

(ii) The amount of credit to which a manufacturer is entitled under clause (i) shall be equal to—

(I) $5 for each tenth of a mile per gallon by which the average fuel economy of the passenger automobiles manufactured by such manufacturer in the model year in which the credit is earned pursuant to clause (i) exceeds the applicable average fuel economy standard established under section 2002(a) or (c) of this title, multiplied by

(II) the total number of passenger automobiles manufactured by such manufacturer during such model year.

(B)(i) Whenever the average fuel economy of a class of automobiles which are not passenger automobiles and which are manufactured by a manufacturer in a particular model year exceeds an average fuel economy standard applicable to automobiles of such class under section 2002(b) of this title, such manufacturer shall be entitled to a credit, calculated under clause (ii), which shall be—

(I) deducted from the amount of any civil penalty which has been or may be assessed against such manufacturer for a violation of section 2007(2) of this title, occurring in the model year immediately prior to the model year in which such manufacturer exceeds such applicable average fuel economy standard, and

(II) to the extent that such credit is not deducted pursuant to subclause (I), deducted from the amount of any such civil penalty assessed against such manufacturer for a violation of section 2007(2) of this title occurring in the model year immediately following the model year in which such manufacturer exceeds such applicable average fuel economy standard.

(ii) The amount of credit to which a manufacturer is entitled under clause (i) shall be equal to—

(I) $5 for each tenth of a mile per gallon by which the average fuel economy of the automobiles of such class manufactured by such manufacturer in the model year in which the credit is earned pursuant to clause (i) exceeds the applicable average fuel economy standard established under section 2002(b) of this title, multiplied by

(II) the total number of automobiles of such class manufactured by such manufacturer during such model year.

(C) Whenever a civil penalty has been assessed and collected under this section from a manufacturer who is entitled to a credit under this paragraph with respect to such civil penalty, the Secretary of the Treasury shall refund to such manufacturer the amount of credit to which such manufacturer is so entitled, except that the amount of such refund shall not exceed the amount of the civil penalty so collected.

(D) The Secretary may prescribe rules for purposes of carrying out the provisions of this paragraph.

(b) Amount of penalty; compromise or modification

(1)(A) Any manufacturer whom the Secretary determines under subsection (a) of this section to have violated a provision of section 2007(1) of this title,[1] shall be liable to the United States for a civil penalty equal to (i) $5 for each tenth of a mile per gallon by which the average fuel economy of the passenger automobiles manufactured by such manufacturer during such model year is exceeded by the applicable average fuel economy standard established under section 2002(a) and (c) of this title, multiplied by (ii) the total number of passenger automobiles manufactured by such manufacturer during such model year.

(B) Any manufacturer whom the Secretary determines under subsection (a) of this section to have violated section 2007(2) of this title shall be liable to the United States for a civil penalty equal to (i) $5 for each tenth of a mile per gallon by which the applicable average fuel economy standard exceeds the average fuel economy of automobiles to which such standard applies, and which are manufactured by such manufacturer during the model year in which the violation occurs, multiplied by (ii) the total number of automobiles to which such standard applies and which are manufactured by such manufacturer during such model year.

(2) Any person whom the Secretary determines under subsection (a) of this section to have violated a provision of section 2007(3) of this title shall be liable to the United States for a civil penalty of not more than $10,000 for each violation. Each day of a continuing violation shall constitute a separate violation for purposes of this paragraph.

(3) The amount of such civil penalty shall be assessed by the Secretary by written notice. The Secretary shall have the discretion to compromise, modify, or remit, with and without conditions, any civil penalty assessed under this subsection against any person, except that any civil penalty assessed for a violation of section 2007(1) or (2) of this title may be so compromised, modified, or emitted only to the extent—

(A) necessary to prevent the insolvency or bankruptcy of such manufacturer,

(B) such manufacturer shows that the violation of section 2007(1) or (2) of this title resulted from an act of God, a strike, or a fire, or

(C) the Federal Trade Commission has certified that modification of such penalty is necessary to prevent a substantial lessening of competition, as determined under paragraph (4).

The Attorney General shall collect any civil penalty for which a manufacturer is liable under this subsection in a civil action under subsection (c)(2) of this section (unless the manufacturer pays such penalty to the Secretary).

(4) Not later than 30 days after a determination by the Secretary under subsection (a)(2) of this section that a manufacturer has violated section 2007(1) or (2) of this title, such manufacturer may apply to the Federal Trade Commission for a certification under this paragraph. If the manufacturer shows and the Federal Trade Commission determines that modification of the civil penalty for which such manufacturer is otherwise liable is necessary to prevent a substantial lessening of competition in that segment of the automobile industry subject to the standard with respect to which such penalty was assessed, the Commission shall so certify. The certification shall specify the maximum amount that such penalty may be reduced. To the maximum extent practicable, the Commission shall render a decision with respect to an application under this paragraph not later than 90 days after the application is filed with the Commission. A proceeding under this paragraph shall not have the effect of delaying the manufacturer's liability under this section for a civil penalty for more than 90 days after such application is filed, but any payment made before a decision of the Commission under this paragraph becomes final shall be paid to the court in which the penalty is collected, and shall (except as otherwise provided in paragraph (5)), be held by such court, until 90 days after such decision becomes final (at which time it shall be paid into the general fund of the Treasury).

(5) Whenever a civil penalty has been assessed and collected from a manufacturer under this section, and is being held by a court

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[1] The words "in a model year" probably should appear immediately preceding the comma.

in accordance with paragraph (4), and the Secretary subsequently determines to modify such civil penalty pursuant to paragraph (3)(C) the Secretary shall direct the court to remit the appropriate amount of such penalty to such manufacturer.

(6) A claim of the United States for a civil penalty assessed against a manufacturer under subsection (b)(1) of this section shall, in the case of the bankruptcy or insolvency of such manufacturer, be subordinate to any claim of a creditor of such manufacturer which arises from an extension of credit before the date on which the judgment in any collection action under this section becomes final (without regard to paragraph (4)).

(c) Review of penalty by interested person

(1) Any interested person may obtain review of a determination (A) of the Secretary pursuant to which a civil penalty has been assessed under subsection (b) of this section, or (B) of the Federal Trade Commission under subsection (b)(4) of this section, in the United States Court of Appeals for the District of Columbia, or for any circuit wherein such person resides or has his principal place of business. Such review may be obtained by filing a notice of appeal in such court within 30 days after the date of such determination, and by simultaneously sending a copy of such notice by certified mail to the Secretary or the Federal Trade Commission, as the case may be. The Secretary or the Commission, as the case may be, shall promptly file in such court a certified copy of the record upon which such determination was made. Any such determination shall be reviewed in accordance with chapter 7 of title 5.

(2) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Secretary, the Attorney General shall recover the amount for which the manufacturer is liable in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(Pub. L. 92-513, title V, § 508, as added Pub. L. 94-163, title III, § 301, Dec. 22, 1975, 89 Stat. 911.)

§ 2009. State laws

(a) Fuel economy standards

Whenever an average fuel economy standard established under this part is in effect, no State or political subdivision of a State shall have authority to adopt or enforce any law or regulation relating to fuel economy standards or average fuel economy standards applicable to automobiles covered by such Federal standard.

(b) Fuel economy disclosures

Whenever any requirement under section 2006 of this title is in effect with respect to any automobile, no State or political subdivision of a State shall have authority to adopt or enforce any law or regulation with respect to the disclosure of fuel economy of such automobile, or of fuel cost associated with the operation of such automobile, if such law or regulation is not identical with such requirement.

(c) State or political subdivision automobiles

Nothing in this section shall be construed to prevent any State or political subdivision thereof from establishing requirements with respect to fuel economy of automobiles procured for its own use.

(Pub. L. 92-513, title V, § 509, as added Pub. L. 94-163, title III, § 301, Dec. 22, 1975, 89 Stat. 914.)

§ 2010. Use of fuel efficient passenger automobiles by Federal Government

(a) The President shall, within 120 days after December 22, 1975, promulgate rules which shall require that all passenger automobiles acquired by all executive agencies in each fiscal year which begins after December 22, 1975, achieve a fleet average fuel economy for such year not less than—

(1) 18 miles per gallon, or

(2) the average fuel economy standard applicable under section 2002(a) of this title for the model year which includes January 1 of such fiscal year,

whichever is greater.

(b) As used in this section:

(1) The term "fleet average fuel economy" means (A) the total number of passenger automobiles acquired in a fiscal year to which this section applies by all executive agencies (excluding passenger automobiles designed to perform combat related missions for the Armed Forces or designed to be used in law enforcement work or emergency rescue work), divided by (B) a sum of terms, each term of which is a fraction created by dividing—

(i) the number of passenger automobiles so acquired of a given model type, by

(ii) the fuel economy of such model type.

(2) The term "executive agency" has the same meaning as such term has for purposes of section 105 of title 5.

(3) The term "acquired" means leased for a period of 60 continuous days or more, or purchased.

(Pub. L. 92-513, title V, § 510, as added Pub. L. 94-163, title III, § 301, Dec. 22, 1975, 89 Stat. 915.)

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Administrator of General Services, see Section 1(a) of Ex. Ord. No. 11912, Apr. 13, 1976, 41 F.R. 15825, set out as a note under section 6201 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2007 of this title.

§ 2011. Retrofit devices

(a) Examination of fuel economy representations

The Federal Trade Commission shall establish a program for systematically examining fuel economy representations made with respect to retrofit devices. Whenever the Commission has reason to believe that any such representation may be inaccurate, it shall request the EPA Administrator to evaluate, in accordance with subsection (b) of this section, the retrofit device with respect to which such representation was made.

(b) Evaluation of retrofit devices

(1) Upon application of any manufacturer of a retrofit device (or prototype thereof), upon the request of the Federal Trade Commission pursuant to subsection (a) of this section, or upon his own motion, the EPA Administrator shall evaluate, in accordance with rules prescribed under subsection (d) of this section, any retrofit device to determine whether the retrofit device increases fuel economy and to determine whether the representations (if any) made with respect to such retrofit device are accurate.

(2) If under paragraph (1) the EPA Administrator tests, or causes to be tested, any retrofit device upon the application of a manufacturer of such device, such manufacturer shall supply, at his own expense, one or more samples of such device to the Administrator and shall be liable for the costs of testing which are incurred by the Administrator. The procedures for testing retrofit devices so supplied may include a requirement for preliminary testing by a qualified independent testing laboratory, at the expense of the manufacturer of such device.

(c) Results of tests; publication in Federal Register

The EPA Administrator shall publish in the Federal Register a summary of the results of all tests conducted under this section, together with the EPA Administrator's conclusions as to—

(1) the effect of any retrofit device on fuel economy;

(2) the effect of any such device on emissions of air pollutants; and

(3) any other information which the Administrator determines to be relevant in evaluating such device.

Such summary and conclusions shall also be submitted to the Secretary and the Federal Trade Commission.

(d) Rules establishing tests and procedures for evaluation of retrofit devices

Within 180 days after December 22, 1975, the EPA Administrator shall, by rule, establish—

(1) testing and other procedures for evaluating the extent to which retrofit devices affect fuel economy and emissions of air pollutants, and

(2) criteria for evaluating the accuracy of fuel economy representations made with respect to retrofit devices.

(e) Definitions

For purposes of this section the term "retrofit device" means any component, equipment, or other device—

(1) which is designed to be installed in or on an automobile (as an addition to, as a replacement for, or through alteration or modification of, any original component, equipment, or other device); and

(2) which any manufacturer, dealer, or distributor of such device represents will provide higher fuel economy than would have resulted with the automobile as originally equipped,

as determined under rules of the Administrator. Such term also includes a fuel additive for use in an automobile.

(Pub. L. 92-513, title V, § 511, as added Pub. L. 94-163, title III, § 301, Dec. 22, 1975, 89 Stat. 915.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2007 of this title.

§ 2012. Reports to Congress

(a) Within 180 days after December 22, 1975, the Secretary shall prepare and submit to the Congress and the President a comprehensive report setting forth findings and containing conclusions and recommendations with respect to (1) a requirement that each new automobile be equipped with a fuel flow instrument reading directly in miles per gallon, and (2) the most feasible means of equipping used automobiles with such instruments. Such report shall include an examination of the effectiveness of such instruments in promoting voluntary reductions in fuel consumption, the cost of such instruments, means of encouraging automobile purchasers to voluntarily purchase automobiles equipped with such instruments, and any other factor bearing on the cost and effectiveness of such instruments and their use.

(b)(1) Within 180 days after December 22, 1975, the Secretary shall prepare and submit to the Congress and the President a comprehensive report setting forth findings and containing conclusions and recommendations with respect to whether or not electric vehicles and other vehicles not consuming fuel (as defined in the first sentence of section 2001(5) of this title) should be covered by this part. Such report shall include an examination of the extent to which any such vehicle should be included under the provisions of this part, the manner in which energy requirements of such vehicles may be compared with energy requirements of fuel-consuming vehicles, the extent to which inclusion of such vehicles would stimulate their production and introduction into commerce, and any recommendations for legislative action.

(2) As used in this subsection, the term "electric vehicle" means a vehicle powered primarily by an electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electrical current.

(Pub. L. 92-513, title V, § 512, as added Pub. L. 94-163, title III, § 301, Dec. 22, 1975, 89 Stat. 916.)

CHAPTER 47—CONSUMER PRODUCT SAFETY

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2219 of this title.

CHAPTER REFERRED TO IN D.C. CODE

This chapter is referred to in section 5 of title 28, Appendix, of the District of Columbia Code.

§ 2051. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) an unacceptable number of consumer products which present unreasonable risks of injury are distributed in commerce;

(2) complexities of consumer products and the diverse nature and abilities of consumers using them frequently result in an inability of users to anticipate risks and to safeguard themselves adequately;

(3) the public should be protected against unreasonable risks of injury associated with consumer products;

(4) control by State and local governments of unreasonable risks of injury associated with consumer products is inadequate and may be burdensome to manufacturers;

(5) existing Federal authority to protect consumers from exposure to consumer products presenting unreasonable risks of injury is inadequate; and

(6) regulation of consumer products the distribution or use of which affects interstate or foreign commerce is necessary to carry out this chapter.

(b) The purposes of this chapter are—

(1) to protect the public against unreasonable risks of injury associated with consumer products;

(2) to assist consumers in evaluating the comparative safety of consumer products;

(3) to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

(4) to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

(Pub. L. 92-573, § 2, Oct. 27, 1972, 86 Stat. 1207.)

EFFECTIVE DATE

Section 34 of Pub. L. 92-573 provided that: "This Act [this chapter] shall take effect on the sixtieth day following the date of its enactment [Oct. 27, 1972], except—

"(1) sections 4 and 32 [sections 2053 and 2081 of this title] shall take effect on the date of enactment of this Act [Oct. 27, 1972], and

"(2) section 30 [section 2079 of this title] shall take effect on the later of (A) 150 days after the date of enactment of this Act [Oct. 27, 1972], or (B) the date on which at least three members of the Commission first take office."

SHORT TITLE

Section 1 of Pub. L. 92-573 provided that: "This Act [enacting this chapter, amending sections 5314 and 5315 of Title 5, Government Organization and Employees, and enacting provisions set out as notes under this section] may be cited as the 'Consumer Product Safety Act'."

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94-284, § 1, May 11, 1976, 90 Stat. 503, provided that: "This Act [amending sections 1193, 1203, 1204, 1261, 1471, 1476, 2052, 2053, 2056, 2058 to 2060, 2064, 2068, 2069, 2071 to 2073, 2075, 2076, 2078, 2079 and 2081 of this title, and section 1114 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under this section and sections 1193, 1261 and 2080 of this title] may be cited as the 'Consumer Product Safety Commission Improvements Act of 1976'."

SEPARABILITY OF PROVISIONS

Section 33 of Pub. L. 92-573 provided that: "If any provision of this Act [this chapter], or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

§ 2052. Definitions

(a) For purposes of this chapter:

(1) The term "consumer product" means any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise; but such term does not include—

(A) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer,

(B) tobacco and tobacco products,

(C) motor vehicles or motor vehicle equipment (as defined by sections 102(3) and (4) of the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1391(3) and (4)]),

(D) pesticides (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.]),

(E) any article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 [26 U.S.C. 4181] (determined without regard to any exemptions from such tax provided by section 4182 or 4221, or any other provision of such Code), or any component of any such article,

(F) aircraft, aircraft engines, propellers, or appliances (as defined in section 101 of the Federal Aviation Act of 1958 [49 U.S.C. 1301]),

(G) boats which could be subjected to safety regulation under the Federal Boat Safety Act of 1971 (46 U.S.C. 1451 et seq.); vessels, and appurtenances to vessels (other than such boats), which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment (including associated equipment, as defined in section 3(8) of the Federal Boat Safety Act of 1971 [46 U.S.C. 1452(8)]) to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by actions taken under any statute referred to in this subparagraph,

(H) drugs, devices, or cosmetics (as such terms are defined in sections 201(g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321(g), (h), and (i)]), or

(I) food. The term "food", as used in this subparagraph means all "food", as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321(f)], including poultry and poultry products (as defined in sections 4(e) and (f) of the Poultry Products Inspection Act [21 U.S.C. 453(e) and (f)], meat, meat food products (as defined in section 1(j) of the Federal Meat Inspection Act [21 U.S.C. 601(j)]), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act [21 U.S.C. 1033]).

Except for the regulation under this chapter or the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.] of fireworks devices or any substance intended for use as a component of any such device, the Commission shall have no authority under the functions transferred pursuant to section 2079 of this title to regulate any product or article described in subparagraph (E) of this paragraph or described, without regard to quantity, in section 845(a)(5) of title 18. See sections 2079(d) and 2080 of this title, for other limitations on Commission's authority to regulate certain consumer products.

(2) The term "consumer product safety rule" means a consumer products safety standard described in section 2056(a) of this title, or a rule under this chapter declaring a consumer product a banned hazardous product.

(3) The term "risk of injury" means a risk of death, personal injury, or serious or frequent illness.

(4) The term "manufacturer" means any person who manufactures or imports a consumer product.

(5) The term "distributor" means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such product.

(6) The term "retailer" means a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.

(7)(A) The term "private labeler" means an owner of a brand or trademark on the label of a consumer product which bears a private label.

(B) A consumer product bears a private label if (i) the product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product, (ii) the person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled, and (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

(8) The term "manufactured" means to manufacture, produce, or assemble.

(9) The term "Commission" means the Consumer Product Safety Commission, established by section 2053 of this title.

(10) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Wake Island, Midway Island, Kingman Reef, Johnston Island, the Canal Zone, American Samoa, or the Trust Territory of the Pacific Islands.

(11) The terms "to distribute in commerce" and "distribution in commerce" mean to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(12) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(13) The terms "import" and "importation" include reimporting a consumer product manufactured or processed, in whole or in part, in the United States.

(14) The term "United States", when used in the geographic sense, means all of the States (as defined in paragraph (10)).

(b) A common carrier, contract carrier, or freight forwarder shall not, for purposes of this chapter, be deemed to be a manufacturer, distributor, or retailer of a consumer product solely by reason of receiving or transporting a consumer product in the ordinary course of its business as such a carrier or forwarder.

(Pub. L. 92-573, § 3, Oct. 27, 1972, 86 Stat. 1208; Pub. L. 94-284, § 3(b), (d), May 11, 1976, 90 Stat. 503.)

REFERENCES IN TEXT

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (a)(1)(D), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§ 136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables volume.

The Federal Boat Safety Act of 1971, referred to in subsec. (a)(1)(G), is Pub. L. 92-75, Aug. 10, 1971, 85 Stat. 213, which is classified generally to chapter 33 (§ 1451 et seq.) of Title 46, Shipping. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 46 and Tables volume.

Title 52 of the Revised Statutes, referred to in subsec. (a)(1)(G), is Title LII, §§ 4399 to 4500, 1878 Revised Statutes of the United States. For classification of Title 52 to this Code, see Tables volume.

The Federal Hazardous Substances Act, referred to in the provisions following subsec. (a)(1)(I), is Pub. L. 86-613, July 12, 1960, 74 Stat. 372, which is classified generally to chapter 30 (§ 1261 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables volume.

AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94-284 substituted in subpar. (D) "pesticides" for "economic poisons", and in the provision following subpar. (I) "other limitations" for "limitations", and added thereto a provision which limited the authority of the Commission to regulate any product or article described in subpar. (E).

§ 2053. Consumer Product Safety Commission

(a) Establishment; Chairman

An independent regulatory commission is hereby established, to be known as the Consumer Product Safety Commission, consisting of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate, one of whom shall be designated by the President as Chairman. The Chairman, when so designated, shall act as Chairman until the expiration of his term of office as Commissioner. Any member of the Commission may be removed by the President for neglect of duty or malfeasance in office but for no other cause.

(b) Term; vacancies

(1) Except as provided in paragraph (2), (A) the Commissioners first appointed under this section shall be appointed for terms ending three, four, five, six, and seven years, respectively, after October 27, 1972, the term of each to be designated by the President at the time of nomination; and (B) each of their successors shall be appointed for a term of seven years from the date of the expiration of the term for which his predecessor was appointed.

(2) Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of this term until his successor has taken office, except that he may not so continue to serve more than one year after the date on which his term would otherwise expire under this subsection.

(c) Restrictions on Commissioner's outside activities

Not more than three of the Commissioners shall be affiliated with the same political party. No individual (1) in the employ of, or holding any official relation to, any person engaged in selling or manufacturing consumer products, or (2) owning stock or bonds of substantial value in a person so engaged, or (3) who is in any other manner pecuniarily interested in such a person, or in a substantial supplier of such a person, shall hold the office of Commissioner. A Commissioner may not engage in any other business, vocation, or employment.

(d) Quorum; seal; Vice chairman

No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission, but three members of the Commission shall constitute a quorum for the transaction of business. The Commission shall have an official seal of which judicial notice shall be taken. The Commission shall annually elect a Vice Chairman to act in the absence or disability of the Chairman or in case of a vacancy in the office of the Chairman.

(e) Offices

The Commission shall maintain a principal office and such field offices as it deems necessary and may meet and exercise any of its powers at any other place.

(f) Functions of Chairman; request for appropriations

(1) The Chairman of the Commission shall be the principal executive officer of the Commission, and he shall exercise all of the executive and administrative functions of the Commission, including functions of the Commission with respect to (A) the appointment and supervision of personnel employed under the Commission (other than personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman), (B) the distribution of business among personnel appointed and supervised by the Chairman and among administrative units of the Commission, and (C) the use and expenditure of funds.

(2) In carrying out any of his functions under the provisions of this subsection the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(3) Requests or estimates for regular, supplemental, or deficiency appropriations on behalf of the Commission may not be submitted by the Chairman without the prior approval of the Commission.

(g) Executive Director; officers and employees

(1) The Chairman, subject to the approval of the Commission, shall appoint an Executive Director, a General Counsel, a Director of Engineering Sciences, a Director of Epidemiology, and a Director of Information. No individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS-18 of the General Schedule.

(2) The Chairman, subject to subsection (f)(2) of this section, may employ such other officers and employees (including attorneys) as are necessary in the execution of the Commission's functions. No regular officer or employee of the Commission who was at any time during the 12 months preceding the termination of his employment with the Commission compensated at a rate in excess of the annual rate of basic pay in effect for grade GS-14 of the General Schedule, shall accept employment or compensation from any manufacturer subject to this chapter, for a period of 12 months after terminating employment with the Commission.

(3) In addition to the number of positions authorized by section 5108(a) of title 5, the Chairman, subject to the approval of the Commission, and subject to the standards and procedures prescribed by chapter 51 of title 5, may place a total of twelve positions in grades GS-16, GS-17, and GS-18.

(4) The appointment of any officer (other than a Commissioner) or employee of the Commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.

(h) Civil action against the United States

Subsections (a) and (h) of section 2680 of title 28 do not prohibit the bringing of a civil action on a claim against the United States which—

(1) is based upon—

(A) misrepresentation or deceit before January 1, 1978, on the part of the Commission or any employee thereof, or

(B) any exercise or performance, or failure to exercise or perform, a discretionary function on the part of the Commission or any employee thereof before January 1, 1978, which exercise, performance, or failure was grossly negligent; and

(2) is not made with respect to any agency action (as defined in section 551(13) of title 5).

In the case of a civil action on a claim based upon the exercise or performance of, or failure to exercise or perform, a discretionary function, no judgment may be entered against the United States unless the court in which such action was brought determines (based upon consideration of all the relevant circumstances, including the statutory responsibility of the Commission and the public interest in encouraging rather than inhibiting the exercise of discretion) that such exercise, performance, or failure to exercise or perform was unreasonable.

(Pub. L. 92-573, § 4(a)-(g), Oct. 27, 1972, 86 Stat. 1210, 1211; Pub. L. 94-284, §§ 4, 5(a), May 11, 1976, 90 Stat. 504.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (g), is set out under section 5332 of Title 5, Government Organization and Employees.

CODIFICATION

Subsec. (i) in the original has been redesignated (h) for purposes of codification.

AMENDMENTS

1976—Subsec. (f). Pub. L. 94-284, § 4(a), added par. (3).

Subsec. (g). Pub. L. 94-284, § 4(b), substituted "regular" for "full-time" preceding "officer or employee of the Commission" and added pars. (3) and (4).

Subsec (h). Pub. L. 94-284, § 5, added subsec. (h).

EFFECTIVE DATE

Section effective Oct. 27, 1972, see section 34(1) of Pub. L. 92-573, set out as a note under section 2051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2052, 2081 of this title.

§ 2054. Product safety information and research

(a) Injury Information Clearinghouse; duties

The Commission shall—

(1) maintain an Injury Information Clearinghouse to collect, investigate, analyze, and disseminate injury data, and information, relating to the causes and prevention of death, injury, and illness associated with consumer products; and

(2) conduct such continuing studies and investigations of deaths, injuries, diseases, other health impairments, and economic losses resulting from accidents involving consumer products as it deems necessary.

(b) Research, investigation and testing of consumer products

The Commission may—

(1) conduct research, studies, and investigations on the safety of consumer products and on improving the safety of such products;

(2) test consumer products and develop product safety test methods and testing devices; and

(3) offer training in product safety investigation and test methods, and assist public and private organizations, administratively and technically, in the development of safety standards and test methods.

(c) Grants and contracts for conduct of functions

In carrying out its functions under this section, the Commission may make grants or enter into contracts for the conduct of such functions with any person (including a governmental entity).

(d) Availability to public of information

Whenever the Federal contribution for any information, research, or development activity authorized by this chapter is more than minimal, the Commission shall include in any contract, grant, or other arrangement for such activity, provisions effective to insure that the rights to all information, uses, processes, patents, and other developments resulting from that activity will be made available to the public without charge on a nonexclusive basis. Nothing in this subsection shall be construed to deprive any person of any right which he may have had, prior to entering into any arrangement referred to in this subsection, to any patent, patent application, or invention.

(Pub. L. 92-573, § 5, Oct. 27, 1972, 86 Stat. 1211.)

§ 2055. Public disclosure of information

(a) Information protected by other provisions of law

(1) Nothing contained in this chapter shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5 or which is otherwise protected by law from disclosure to the public.

(2) All information reported to or otherwise obtained by the Commission or its representative under this chapter which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 shall be considered confidential and shall not be disclosed, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this chapter shall authorize the withholding of information by the Commission or any officer or employee under its control from the duly authorized committees of the Congress.

(b) Summary of information to manufacturer prior to public disclosure

(1) Except as provided by paragraph (2) of this subsection, not less than 30 days prior to its public disclosure of any information obtained under this chapter, or to be disclosed to the public in connection therewith (unless the Commission finds out that the public health and safety requires a lesser period of notice), the Commission shall, to the extent practicable, notify, and provide a summary of the information to, each manufacturer or private labeler of any consumer product to which such information pertains, if the manner in which such consumer product is to be designated or described in such information will permit the public to ascertain readily the identity of such manufacturer or private labeler, and shall provide such manufacturer or private labeler with a reasonable opportunity to submit comments to the Commission in regard to such information. The Commission shall take reasonable steps to assure, prior to its public disclosure thereof, that information from which the identity of such manufacturer or private labeler may be readily ascertained is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of this chapter. If the Commission finds that, in the administration of this chapter, it has made public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner similar to that in which such disclosure was made, publish a retraction of such inaccurate or misleading information.

(2) Paragraph (1) (except for the last sentence thereof) shall not apply to the public disclosure of (A) information about any consumer product with respect to which product the Commission has filed an action under section 2061 of this title (relating to imminently hazardous products), or which the Commission has reasonable cause to believe is in violation of section 2068 of this title (relating to prohibited acts), or (B) information in the course of or concerning any administrative or judicial proceeding under this chapter.

(c) Information as to risk or injury associated with product

The Commission shall communicate to each manufacturer of a consumer product, insofar as may be practicable, information as to any significant risk of injury associated with such product.

(Pub. L. 92-573, § 6, Oct. 27, 1972, 86 Stat. 1212.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2074, 2078 of this title.

§ 2056. Consumer product safety standards

(a)(1) Types of requirements

The Commission may by rule, in accordance with this section and section 2058 of this title, promulgate consumer product safety standards. A consumer product safety standard shall consist of one or more of any of the following types of requirements:

(A) Requirements as to performance, composition, contents, design, construction, finish, or packaging of a consumer product.

(B) Requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions, or requirements respecting the form of warnings or instructions.

Any requirement of such a standard shall be reasonably necessary to prevent or reduce an unreasonable risk of injury associated with such product. The requirements of such a standard (other than requirements relating to labeling, warnings, or instructions) shall, whenever feasible, be expressed in terms of performance requirements.

(2) No consumer product safety standard promulgated under this section shall require, incorporate, or reference any sampling plan. The preceding sentence shall not apply with respect to any consumer product safety standard or other agency action of the Commission under this chapter (A) applicable to a fabric, related material, or product which is subject to a flammability standard or for which a flammability standard or other regulation may be promulgated under the Flammable Fabrics Act [15 U.S.C. 1191 et seq.], or (B) which is or may be applicable to glass containers.

(b) Proceedings for development of standards; notice; development period

A proceeding for the development of a consumer product safety standard under this chapter shall be commenced by the publication in the Federal Register of a notice which shall—

(1) identify the product and the nature of the risk of injury associated with the product;

(2) state the Commission's determination that a consumer product safety standard is necessary to eliminate or reduce the risk of injury;

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceeding; and

(4) include an invitation for any person, including any State or Federal agency (other than the Commission), within 30 days after

the date of publication of the notice (A) to submit to the Commission an existing standard as the proposed consumer product safety standard or (B) to offer to develop the proposed consumer product safety standard.

An invitation under paragraph (4)(B) shall specify the period of time in which the offeror of an accepted offer is to develop the proposed standard. The period specified shall be a period ending 150 days after the date the offer is accepted unless the Commission for good cause finds (and includes such finding in the notice) that a different period is appropriate.

(c) Publications of proposed safety rules developed from existing standards

If the Commission determines that (1) there exists a standard which has been issued or adopted by any Federal agency or by any other qualified agency, organization, or institution, and (2) such standard if promulgated under this chapter, would eliminate or reduce the unreasonable risk of injury associated with the product, then it may, in lieu of accepting an offer pursuant to subsection (d) of this section, publish such standard as a proposed consumer product safety rule.

(d) Offers to develop proposed standards; Commission's contribution to development costs; regulations

(1) Except as provided by subsection (c) of this section, the Commission shall accept one, and may accept more than one, offer to develop a proposed consumer product safety standard pursuant to the invitation prescribed by subsection (b)(4)(B) of this section, if it determines that the offeror is technically competent, is likely to develop an appropriate standard within the period specified in the invitation under subsection (b) of this section, and will comply with regulations of the Commission under paragraph (3) of this subsection. The Commission shall publish in the Federal Register the name and address of each person whose offer it accepts, and a summary of the terms of such offer as accepted.

(2) If an offer is accepted under this subsection, the Commission may agree to contribute to the offeror's cost in developing a proposed consumer product safety standard, in any case in which the Commission determines that such contribution is likely to result in a more satisfactory standard than would be developed without such contribution, and that the offeror is financially responsible. Regulations of the Commission shall set forth the items of cost in which it may participate, and shall exclude any contribution to the acquisition of land or buildings. Payments under agreements entered into under this paragraph may be made without regard to section 529 of title 31.

(3) The Commission shall prescribe regulations governing the development of proposed consumer product safety standards by persons whose offers are accepted under paragraph (1). Such regulations shall include requirements—

(A) that standards recommended for promulgation be suitable for promulgation under this chapter, be supported by test data or such other documents or materials as the Commission may reasonably require to be developed, and (where appropriate) contain suitable test methods for measurement of compliance with such standards;

(B) for notice and opportunity by interested persons (including representatives of consumers and consumer organizations) to participate in the development of such standards;

(C) for the maintenance of records, which shall be available to the public, to disclose the course of the development of standards recommended for promulgation, the comments and other information submitted by any person in connection with such development (including dissenting views and comments and information with respect to the need for such recommended standards), and such other matters as may be relevant to the evaluation of such recommended standards; and

(D) that the Commission and the Comptroller General of the United States, or any of their duly authorized representatives, have access for the purpose of audit and examination to any books, documents, papers, and records relevant to the development of such recommended standards or to the expenditure of any contribution of the Commission for the development of such standards.

(e) Development of proposed safety rules by Commission; publication; independent development of proposals; development period; publication

(1) If the Commission publishes a notice pursuant to subsection (b) of this section to commence a proceeding for the development of a consumer product safety standard for a consumer product and if—

(A) the Commission does not, within 30 days after the date of publication of such notice, accept an offer to develop such a standard, or

(B) the development period (specified in paragraph (3)) for such standard ends,

the Commission may develop a proposed consumer product safety rule respecting such product and publish such proposed rule.

(2) If the Commission accepts an offer to develop a proposed consumer product safety standard, the Commission may not, during the development period (specified in paragraph (3)) for such standard—

(A) publish a proposed rule applicable to the same risk of injury associated with such product, or

(B) develop proposals for such standard or contract with third parties for such development, unless the Commission determines that no offeror whose offer was accepted is making satisfactory progress in the development of such standard.

In any case in which the sole offeror whose offer is accepted under subsection (d)(1) of this section is the manufacturer, distributor, or retailer of a consumer product proposed to be regulated by the consumer product safety standard, the Commission may independently proceed to develop proposals for such standard during the development period.

(3) For purposes of paragraph (2), the development period for any standard is a period (A) beginning on the date on which the Commission first accepts an offer under subsection (d)(1) of this section for the development of a

proposed standard, and (B) ending on the earlier of—

(i) the end of the period specified in the notice of proceeding (except that the period specified in the notice may be extended if good cause is shown and the reasons for such extension are published in the Federal Register), or

(ii) the date on which it determines (in accordance with such procedures as it may by rule prescribe) that no offeror whose offer was accepted is able and willing to continue satisfactorily the development of the proposed standard which was the subject of the offer, or

(iii) the date on which an offeror whose offer was accepted submits such a recommended standard to the Commission.

(f) Withdrawal of notice; proposed rules; publication

If the Commission publishes a notice pursuant to subsection (b) of this section to commence a proceeding for the development of a consumer product safety standard and if—

(1) no offer to develop such a standard is submitted to, or, if such an offer is submitted to the Commission, no such offer is accepted by, the Commission within a period of 60 days from the publication of such notice (or within such longer period as the Commission may prescribe by a notice published in the Federal Register stating good cause therefor), the Commission shall—

(A) by notice published in the Federal Register terminate the proceeding begun by the subsection (b) notice, or

(B) develop proposals for a consumer product safety rule for a consumer product identified in the subsection (b) notice and within a period of 150 days (or within such longer period as the Commission may prescribe by a notice published in the Federal Register stating good cause therefor) from the expiration of the 60-day (or longer) period—

(i) by notice published in the Federal Register terminate the proceeding begun by the subsection (b) notice, or

(ii) publish a proposed consumer product safety rule; or

(2) an offer to develop such a standard is submitted to and accepted by the Commission within the 60-day (or longer) period, then not later than 210 days (or such later time as the Commission may prescribe by notice published in the Federal Register stating good cause therefor) after the date of the acceptance of such offer the Commission shall take the action described in clause (i) or (ii) of paragraph (1)(B).

(Pub. L. 92-573, § 7, Oct. 27, 1972, 86 Stat. 1212; Pub. L. 94-284, §§ 6, 7, 8(a), May 11, 1976, 90 Stat. 505, 506.)

REFERENCES IN TEXT

The Flammable Fabrics Act, referred to in subsec. (a)(2), is act June 30, 1953, ch. 164, 67 Stat. 111, which is classified generally to chapter 25 (§ 1191 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1191 of this title and Tables volume.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-284, § 6, designated existing provision as par. (1), redesignated as subpars. (A) and (B) existing pars. (1) and (2), and added par. (2).

Subsec. (b). Pub. L. 94-284, § 7(a), substituted "date the offer is accepted" for "publication of notice", in the provision following par. (4)(B).

Subsec. (d)(2). Pub. L. 94-284, § 8(a), inserted provision which permits the Commission to advance public moneys without the need of authorized appropriations as required by section 529 of title 31.

Subsec. (e). Pub. L. 94-284, § 7(b), permitted the Commission to develop and publish a proposed consumer safety product rule if the development period as specified in par. (3) ends.

Subsec. (f). Pub. L. 94-284, § 7(c), provided that if within 60 days after publication of notice for a proceeding for the development of a consumer product safety standard (or longer if the Commission so prescribe), no offer is submitted or none is acceptable, the Commission terminate the proceeding or develop proposals of its own, which proposals be published as a rule within 150 days after the expiration of the 60 day period or the proceeding then terminated, and that if an offer is accepted within the 60 day period, then within 210 days after acceptance, the Commission must publish the proposal as a rule or terminate the proceeding.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2052, 2058, 2059, 2060 of this title.

§ 2057. Banned hazardous products

Whenever the Commission finds that—

(1) a consumer product is being, or will be, distributed in commerce and such consumer product presents an unreasonable risk of injury; and

(2) no feasible consumer product safety standard under this chapter would adequately protect the public from the unreasonable risk of injury associated with such product,

the Commission may propose and, in accordance with section 2058 of this title, promulgate a rule declaring such product a banned hazardous product.

(Pub. L. 92-573, § 8, Oct. 27, 1972, 86 Stat. 1215.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2058, 2059, 2060 of this title.

§ 2058. Administrative procedure governing promulgation of consumer product safety rules

(a) Promulgation; withdrawal of notice of proceeding

(1) Within 60 days after the publication under section 2056(c), (e)(1), or (f) of this title or section 2057 of this title of a proposed consumer product safety rule respecting a risk of injury associated with a consumer product, the Commission shall—

(A) promulgate a consumer product safety rule respecting the risk of injury associated with such product if it makes the findings required under subsection (c) of this section, or

(B) withdraw by rule the applicable notice of proceeding if it determines that such rule is not (i) reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product, or (ii) in the public interest;

except that the Commission may extend such 60-day period for good cause shown (if it publishes its reasons therefor in the Federal Register).

(2) Consumer product safety rules which have been proposed under section 2056(c), (e)(1), or (f) of this title or section 2057 of this title shall be promulgated pursuant to section 553 of title 5, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(b) Identification of risk of injury; consideration of available product data; special needs of elderly and handicapped

A consumer product safety rule shall express in the rule itself the risk of injury which the standard is designed to eliminate or reduce. In promulgating such a rule the Commission shall consider relevant available product data including the results of research, development, testing, and investigation activities conducted generally and pursuant to this chapter. In the promulgation of such a rule the Commission shall also consider and take into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by such rule.

(c) Findings for inclusion in rules; required findings

(1) Prior to promulgating a consumer product safety rule, the Commission shall consider, and shall make appropriate findings for inclusion in such rule with respect to—

(A) the degree and nature of the risk of injury the rule is designed to eliminate or reduce;

(B) the approximate number of consumer products, or types or classes thereof, subject to such rule;

(C) the need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need; and

(D) any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.

(2) The Commission shall not promulgate a consumer product safety rule unless it finds (and includes such finding in the rule)—

(A) that the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product;

(B) that the promulgation of the rule is in the public interest; and

(C) in the case of a rule declaring the product a banned hazardous product, that no feasible consumer product safety standard under this chapter would adequately protect the public from the unreasonable risk of injury associated with such products.

(d) Effective dates for rules and standards; stockpiling

(1) Each consumer product safety rule shall specify the date such rule is to take effect not exceeding 180 days from the date promulgated, unless the Commission finds, for good cause shown, that a later effective date is in the public interest and publishes its reasons for such finding. The effective date of a consumer products safety standard under this chapter shall be set at a date at least 30 days after the date of promulgation unless the Commission for good cause shown determines that an earlier effective date is in the public interest. In no case may the effective date be set at a date which is earlier than the date of promulgation. A consumer product safety standard shall be applicable only to consumer products manufactured after the effective date.

(2) The Commission may by rule prohibit a manufacturer of a consumer product from stockpiling any product to which a consumer product safety rule applies, so as to prevent such manufacturer from circumventing the purpose of such consumer product safety rule. For purposes of this paragraph, the term "stockpiling" means manufacturing or importing a product between the date of promulgation of such consumer product safety rule and its effective date at a rate which is significantly greater (as determined under the rule under this paragraph) than the rate at which such product was produced or imported during a base period (prescribed in the rule under this paragraph) ending before the date of promulgation of the consumer product safety rule.

(e) Amendment and revocation of rules

The Commission may by rule amend or revoke any consumer product safety rule. Such amendment or revocation shall specify the date on which it is to take effect which shall not exceed 180 days from the date the amendment or revocation is published unless the Commission finds for good cause shown that a later effective date is in the public interest and publishes its reasons for such finding. Where an amendment involves a material change in a consumer product safety rule, sections 2056 and 2057 of this title, and subsections (a) through (d) of this section shall apply. In order to revoke a consumer product safety rule, the Commission shall publish a proposal to revoke such rule in the Federal Register, and allow oral and written presentations in accordance with subsection (a)(2) of this section. It may revoke such rule only if it determines that the rule is not reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the products. Section 2060 of this title shall apply to any amendment of a consumer product safety rule which involves a material change and to any revocation of a consumer product safety rule, in the same manner and to the same extent as such section applies to the Commission's action in promulgating such a rule.

(Pub. L. 92-573, § 9, Oct. 27, 1972, 86 Stat. 1215; Pub. L. 94-284, § 9, May 11, 1976, 90 Stat. 506.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-284 inserted provision directing the Commission to take into consideration the special needs of the elderly and the handicapped in promulgating a consumer product safety rule.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2056, 2057, 2060, 2068 of this title.

§ 2059. Petition for consumer product safety rule

(a) Filing by interested persons

Any interested person, including a consumer or consumer organization, may petition the Commission to commence a proceeding for the issuance, amendment, or revocation of a consumer product safety rule.

(b) Contents of petition

Such petition shall be filed in the principal office of the Commission and shall set forth (1) facts which it is claimed establish that a consumer product safety rule or an amendment or revocation thereof is necessary, and (2) a brief description of the substance of the consumer product safety rule or amendment thereof which it is claimed should be issued by the Commission.

(c) Hearing; investigation

The Commission may hold a public hearing or may conduct such investigation or proceeding as it deems appropriate in order to determine whether or not such petition should be granted.

(d) Grant or denial of petition

Within 120 days after filing of a petition described in subsection (b) of this section, the Commission shall either grant or deny the petition. If the Commission grants such petition, it shall promptly commence an appropriate proceeding under section 2056 or 2057 of this title. If the Commission denies such petition it shall publish in the Federal Register its reasons for such denial.

(e) Civil action; costs

(1) If the Commission denies a petition made under this section (or if it fails to grant or deny such petition within the 120-day period) the petitioner may commence a civil action in a United States district court to compel the Commission to initiate a proceeding to take the action requested. Any such action shall be filed within 60 days after the Commission's denial of the petition, or (if the Commission fails to grant or deny the petition within 120 days after filing the petition) within 60 days after the expiration of the 120-day period.

(2) If the petitioner can demonstrate to the satisfaction of the court by a preponderance of evidence in a de novo proceeding before such court, that the consumer product presents an unreasonable risk of injury, and that the failure of the Commission to initiate a rule-making proceeding under section 2056 or 2057 of this title unreasonably exposes the petitioner or other consumers to a risk of injury presented by the consumer product, the court shall order the Commission to initiate the action requested by the petitioner.

(3) In any action under this subsection, the district court shall have no authority to compel the Commission to take any action other than the initiation of a rule-making proceeding in accordance with section 2056 or 2057 of this title.

(4) In any action under this subsection the court may in the interest of justice award the costs of suit, including reasonable attorneys' fees and reasonable expert witnesses' fees. Attorneys' fees may be awarded against the United States (or any agency or official of the United States) without regard to section 2412 of title 28, or any other provision of law. For purposes of this paragraph and sections 2060(c), 2072(a), and 2073 of this title, a reasonable attorney's fee is a fee (A) which is based upon (i) the actual time expended by an attorney in providing advice and other legal services in connection with representing a person in an action brought under this subsection, and (ii) such reasonable expenses as may be incurred by the attorney in the provision of such services, and (B) which is computed at the rate prevailing for the provision of similar services with respect to actions brought in the court which is awarding such fee.

(f) Nature of remedy

The remedies under this section shall be in addition to, and not in lieu of, other remedies provided by law.

(g) Petitions filed after October 27, 1975

Subsection (e) of this section shall apply only with respect to petitions filed more than 3 years after October 27, 1972.

(Pub. L. 92-573, § 10, Oct. 27, 1972, 86 Stat. 1217; Pub. L. 94-284, § 10(a), May 11, 1976, 90 Stat. 506.)

AMENDMENTS

1976—Subsec. (e). Pub. L. 94-284 added par. (4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2060, 2072, 2073 of this title.

§ 2060. Judicial review of consumer product safety rules

(a) Petition by persons adversely affected, consumers, or consumer organizations

Not later than 60 days after a consumer product safety rule is promulgated by the Commission, any person adversely affected by such rule, or any consumer or consumer organization, may file a petition with the United States court of appeals for the District of Columbia or for the circuit in which such person, consumer, or organization resides or has his principal place of business for judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose and to the Attorney General. The record of the proceedings on which the Commission based its rule shall be filed in the court as provided for in section 2112 of title 28. For purposes of this section, the term "record" means such consumer product safety rule; any notice or proposal published pursuant to section 2056, 2057, or 2058 of this title; the transcript required by section 2058(a)(2) of this title of any oral presentation; any written submission of interested parties; and any other information which the Commission considers relevant to such rule.

(b) Additional data, views, or arguments

If the petitioner applies to the court for leave to adduce additional data, views, or arguments and shows to the satisfaction of the court that such additional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceeding before the Commission, the court may order the Commission to provide additional opportunity for the oral presentation of data, views, or arguments and for written submissions. The Commission may modify its findings, or make new findings by reason of the additional data, views, or arguments so taken and shall file such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original rule, with the return of such additional data, views, or arguments.

(c) Jurisdiction; costs and attorneys' fees; substantial evidence to support administrative findings

Upon the filing of the petition under subsection (a) of this section the court shall have jurisdiction to review the consumer product safety rule in accordance with chapter 7 of title 5, and to grant appropriate relief, including interim relief, as provided in such chapter. A court may in the interest of justice include in such relief an award of the costs of suit, including reasonable attorneys' fees (determined in accordance with section 2059(e)(4) of this title and reasonable expert witnesses' fees. Attorneys' fees may be awarded against the United States (or any agency or official of the United States) without regard to section 2412 of title 28 or any other provision of law. The consumer product safety rule shall not be affirmed unless the Commission's findings under section 2058(c) of this title are supported by substantial evidence on the record taken as a whole.

(d) Supreme Court review

The judgment of the court affirming or setting aside, in whole or in part, any consumer product safety rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(e) Other remedies

The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law.

(Pub. L. 92-573, § 11, Oct. 27, 1972, 86 Stat. 1218; Pub. L. 94-284, §§ 10(b), 11(a), May 11, 1976, 90 Stat. 507.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-284, § 11(a), permitted the Commission to file the record of its proceedings on which its rule was based with the court in lieu of transmitting the record to the Attorney General.

Subsec. (c). Pub. L. 94-284, § 10(b), inserted provision permitting the court to award costs, including reasonable attorneys' fees, in the interest of justice.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2058, 2059 of this title.

§ 2061. Imminent hazards

(a) Filing of action

The Commission may file in a United States district court an action (1) against an imminently hazardous consumer product for seizure of such product under subsection (b)(2) of this section, or (2) against any person who is a manufacturer, distributor, or retailer of such product, or (3) against both. Such an action may be filed notwithstanding the existence of a consumer product safety rule applicable to such product, or the pendency of any administrative or judicial proceedings under any other provision of this chapter. As used in this section, and hereinafter in this chapter, the term "imminently hazardous consumer product" means a consumer product which presents imminent and unreasonable risk of death, serious illness, or severe personal injury.

(b) Relief; product condemnation and seizure

(1) The district court in which such action is filed shall have jurisdiction to declare such product an imminently hazardous consumer product, and (in the case of an action under subsection (a)(2) of this section) to grant (as ancillary to such declaration or in lieu thereof) such temporary or permanent relief as may be necessary to protect the public from such risk. Such relief may include a mandatory order requiring the notification of such risk to purchasers of such product known to the defendant, public notice, the recall, the repair or the replacement of, or refund for, such product.

(2) In the case of an action under subsection (a)(1) of this section, the consumer product may be proceeded against by process of libel for the seizure and condemnation of such product in any United States district court within the jurisdiction of which such consumer product is found. Proceedings and cases instituted under the authority of the preceding sentence shall conform as nearly as possible to proceedings in rem in admiralty.

(c) Consumer product safety rule

Where appropriate, concurrently with the filing of such action or as soon thereafter as may be practicable, the Commission shall initiate a proceeding to promulgate a consumer product safety rule applicable to the consumer product with respect to which such action is filed.

(d) Consultation with Product Safety Advisory Council

(1) Prior to commencing an action under subsection (a) of this section, the Commission may consult the Product Safety Advisory Council (established under section 2077 of this title) with respect to its determination to commence such action, and request the Council's recommendations as to the type of temporary or permanent relief which may be necessary to protect the public.

(2) The Council shall submit its recommendations to the Commission within one week of such request.

(3) Subject to paragraph (2), the Council may conduct such hearing or offer such opportunity for the presentation of views as it may consider necessary or appropriate.

(e) Jurisdiction and venue; process; subpena

(1) An action under subsection (a)(2) of this section may be brought in the United States district court for the District of Columbia or in any judicial district in which any of the defendants is found, is an inhabitant or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. Subpenas requiring attendance of witnesses in

such an action may run into any other district. In determining the judicial district in which an action may be brought under this section in instances in which such action may be brought in more than one judicial district, the Commission shall take into account the convenience of the parties.

(2) Whenever proceedings under this section involving substantially similar consumer products are pending in courts in two or more judicial districts, they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest, upon notice to all other parties in interest.

(f) Employment of attorneys by Commission

Notwithstanding any other provision of law, in any action under this section, the Commission may direct attorneys employed by it to appear and represent it.

(Pub. L. 92-573, § 12, Oct. 27, 1972, 86 Stat. 1218.)

TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2055, 2064, 2066 of this title.

§ 2062. New consumer products

(a) The Commission may, by rule, prescribe procedures for the purpose of insuring that the manufacturer of any new consumer product furnish notice and a description of such a product to the Commission before its distribution in commerce.

(b) For purposes of this section, the term "new consumer product" means a consumer product which incorporates a design, material, or form of energy exchange which (1) has not previously been used substantially in consumer products and (2) as to which there exists a lack of information adequate to determine the safety of such product in use by consumers.

(Pub. L. 92-573, § 13, Oct. 27, 1972, 86 Stat. 1219.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2068 of this title.

§ 2063. Product certification and labeling

(a) Certification accompanying product; products with more than one manufacturer

(1) Every manufacturer of a product which is subject to a consumer product safety standard under this chapter and which is distributed in commerce (and the private labeler of such product if it bears a private label) shall issue a certificate which shall certify that such product conforms to all applicable consumer product safety standards, and shall specify any standard which is applicable. Such certificate shall accompany the product or shall otherwise be furnished to any distributor or retailer to whom the product is delivered. Any certificate under this subsection shall be based on a test of each product or upon a reasonable testing program; shall state the name of the manufacturer or private labeler issuing the certificate; and shall include the date and place of manufacture.

(2) In the case of a consumer product for which there is more than one manufacturer or more than one private labeler, the Commission may by rule designate one or more of such manufactuers or one or more of such private labelers (as the case may be) as the persons who shall issue the certificate required by paragraph (1) of this subsection, and may exempt all other manufacturers of such product or all other private labelers of the product (as the case may be) from the requirement under paragraph (1) to issue a certificate with respect to such product.

(b) Rules to establish reasonable testing programs

The Commission may by rule prescribe reasonable testing programs for consumer products which are subject to consumer product safety standards under this chapter and for which a certificate is required under subsection (a) of this section. Any test or testing program on the basis of which a certificate is issued under subsection (a) of this section may, at the option of the person required to certify the product, be conducted by an independent third party qualified to perform such tests or testing programs.

(c) Form and contents of labels

The Commission may by rule require the use and prescribe the form and content of labels which contain the following information (or that portion of it specified in the rule)—

(1) The date and place of manufacture of any consumer product.

(2) A suitable identification of the manufacturer of the consumer product, unless the product bears a private label in which case it shall identify the private labeler and shall also contain a code mark which will permit the seller of such product to identify the manufacturer thereof to the purchaser upon his request.

(3) In the case of a consumer product subject to a consumer product safety rule, a certification that the product meets all applicable consumer product safety standards and a specification of the standards which are applicable.

Such labels, where practicable, may be required by the Commission to be permanently marked on or affixed to any such consumer product. The Commission may, in appropriate cases, permit information required under paragraphs (1) and (2) of this subsection to be coded.

(Pub. L. 92-573, § 14, Oct. 27, 1972, 86 Stat. 1220.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2066, 2068 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 5 of title 28, Appendix, of the District of Columbia Code.

§ 2064. Substantial product hazards

(a) Definition

For purposes of this section, the term "substantial product hazard" means—

(1) a failure to comply with an applicable consumer product safety rule which creates a substantial risk of injury to the public, or

(2) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.

(b) Noncompliance with applicable consumer product safety rules; product defects; notice to Commission by manufacturer, distributor, or retailer

Every manufacturer of a consumer product distributed in commerce, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product—

(1) fails to comply with an applicable consumer product safety rule; or

(2) contains a defect which could create a substantial product hazard described in subsection (a)(2) of this section,

shall immediately inform the Commission of such failure to comply or of such defect, unless such manufacturer, distributor, or retailer has actual knowledge that the Commission has been adequately informed of such defect or failure to comply.

(c) Public notice of defect or failure to comply; mail notice

If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f) of this section) that a product distributed in commerce presents a substantial product hazard and that notification is required in order to adequately protect the public from such substantial product hazard, the Commission may order the manufacturer or any distributor or retailer of the product to take any one or more of the following actions:

(1) To give public notice of the defect or failure to comply.

(2) To mail notice to each person who is a manufacturer, distributor, or retailer of such product.

(3) To mail notice to every person to whom the person required to give notice knows such product was delivered or sold.

Any such order shall specify the form and content of any notice required to be given under such order.

(d) Repair; replacement; refunds; action plan

If the Commission determines (after affording interested parties, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (f) of this section) that a product distributed in commerce presents a substantial product hazard and that action under this subsection is in the public interest, it may order the manufacturer or any distributor or retailer of such product to take whichever of the following actions the person to whom the order is directed elects:

(1) To bring such product into conformity with the requirements of the applicable consumer product safety rule or to repair the defect in such product.

(2) To replace such product with a like or equivalent product which complies with the applicable consumer product safety rule or which does not contain the defect.

(3) To refund the purchase price of such product (less a reasonable allowance for use, if such product has been in the possession of a consumer for one year or more (A) at the time of public notice under subsection (c) of this section, or (B) at the time the consumer receives actual notice of the defect or noncompliance, whichever first occurs).

An order under this subsection may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking action under whichever of the preceding paragraphs of this subsection under which such person has elected to act. The Commission shall specify in the order the persons to whom refunds must be made if the person to whom the order is directed elects to take action described in paragraph (3). If an order under this subsection is directed to more than one person, the Commission shall specify which person has the election under this subsection. An order under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general headnote 2 to the Tariff Schedules of the United States), or from doing any combination of such actions, the product with respect to which the order was issued.

(e) Reimbursement

(1) No charge shall be made to any person (other than a manufacturer, distributor, or retailer) who avails himself of any remedy provided under an order issued under subsection (d) of this section, and the person subject to the order shall reimburse each person (other than a manufacturer, distributor, or retailer) who is entitled to such a remedy for any reasonable and foreseeable expenses incurred by such person in availing himself of such remedy.

(2) An order issued under subsection (c) or (d) of this section with respect to a product may require any person who is a manufacturer, distributor, or retailer of the product to reimburse any other person who is a manufacturer, distributor, or retailer of such product for such other person's expenses in connection with carrying out the order, if the Commission determines such reimbursement to be in the public interest.

(f) Hearing

An order under subsection (c) or (d) of this section may be issued only after an opportunity for a hearing in accordance with section 554 of title 5 except that, if the Commission determines that any person who wishes to participate in such hearing is a part of a class of participants who share an identity of interest, the Commission may limit such person's participation in such hearing to participation through a single representative designated by such class (or by the Commission if such class fails to designate such a representative).

(g) Preliminary injunction

(1) If the Commission has initiated a proceeding under this section for the issuance of an order under subsection (d) of this section with respect to a product which the Commission has reason to believe presents a substantial product hazard, the Commission (without regard to section 2076(b)(7) of this title) or the Attorney General may, in accordance with section 2061(e)(1) of this title, apply to a district court of the United States for the issuance of a preliminary injunction to restrain the distribution in commerce of such product pending the completion of such proceeding. If such a preliminary injunction has been issued, the Commission (or the Attorney General if the preliminary injunction was issued upon an application of the Attorney General) may apply to the issuing court for extensions of such preliminary injunction.

(2) Any preliminary injunction, and any extension of a preliminary injunction, issued under this subsection with respect to a product shall be in effect for such period as the issuing court prescribes not to exceed a period which extends beyond the thirtieth day from the date of the issuance of the preliminary injunction (or, in the case of a preliminary injunction which has been extended, the date of its extension) or the date of the completion or termination of the proceeding under this section respecting such product, whichever date occurs first.

(3) The amount in controversy requirement of section 1331 of title 28 does not apply with respect to the jurisdiction of a district court of the United States to issue or exend[1] a preliminary injunction under this subsection.

(Pub. L. 92-573, § 15, Oct. 27, 1972, 86 Stat. 1221; Pub. L. 94-284, § 12(a), May 11, 1976, 90 Stat. 508.)

REFERENCES IN TEXT

General headnote 2 to the Tariff Schedules of the United States, referred to in subsec. (d), is set forth in section 1202(2) of Title 19, Customs Duties.

AMENDMENTS

1976—Subsec. (d). Pub. L. 94-284, § 12(a)(1), provided, in the provision following par. (3), that an order issued under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States, the product for which the order was issued.

Subsec. (g). Pub. L. 94-284, § 12(a)(2), added subsec. (g).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2066, 2068, 2071, 2073 of this title.

§ 2065. Inspection and recordkeeping

(a) For purposes of implementing this chapter, or rules or orders prescribed under this chapter, officers or employees duly designated by the Commission, upon presenting appropriate credentials and a written notice from the Commission to the owner, operator, or agent in charge, are authorized—

(1) to enter, at reasonable times, (A) any factory, warehouse, or establishment in which consumer products are manufactured or held, in connection with distribution in commerce, or (B) any conveyance being used to transport consumer products in connection with distribution in commerce; and

(2) to inspect, at reasonable times and in a reasonable manner such conveyance or those areas of such factory, warehouse, or establishment where such products are manufactured, held, or transported and which may relate to the safety of such products. Each such inspection shall be commenced and completed with reasonable promptness.

(b) Every person who is a manufacturer, private labeler, or distributor of a consumer product shall establish and maintain such records, make such reports, and provide such information as the Commission may, by rule, reasonably require for the purposes of implementing this chapter, or to determine compliance with rules or orders prescribed under this chapter. Upon request of an officer or employee duly designated by the Commission, every such manufacturer, private labeler, or distributor shall permit the inspection of appropriate books, records, and papers relevant to determining whether such manufacturer, private labeler, or distributor has acted or is acting in compliance with this chapter and rules under this chapter.

(Pub. L. 92-573, § 16, Oct. 27, 1972, 86 Stat. 1222.)

§ 2066. Imported products

(a) Refusal of admission

Any consumer product offered for importation into the customs territory of the United States (as defined in general headnote 2 to the Tariff Schedules of the United States) shall be refused admission into such customs territory if such product—

(1) fails to comply with an applicable consumer product safety rule;

(2) is not accompanied by a certificate required by section 2063 of this title, or is not labeled in accordance with regulations under section 2063(c) of this title;

(3) is or has been determined to be an imminently hazardous consumer product in a proceeding brought under section 2061 of this title;

(4) has a product defect which constitutes a substantial product hazard (within the meaning of section 2064(a)(2) of this title; or

(5) is a product which was manufactured by a person who the Commission has informed the Secretary of the Treasury is in violation of subsection (g) of this section.

(b) Samples

The Secretary of the Treasury shall obtain without charge and deliver to the Commission, upon the latter's request, a reasonable number of samples of consumer products being offered for import. Except for those owners or consignees who are or have been afforded an opportunity for a hearing in a proceeding under section 2061 of this title with respect to an imminently hazardous product, the owner or consignee of the product shall be afforded an opportunity by the Commission for a hearing in accordance with section 554 of title 5 with respect to the importation of such products into the customs territory of the United States. If it appears from examination of such samples or otherwise that a product must be refused admission under the terms of subsection (a) of this section, such product shall be refused admission, unless subsection (c) of this section applies and is complied with.

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[1] So in original. Probably should read "extend".

(c) Modification

If it appears to the Commission that any consumer product which may be refused admission pursuant to subsection (a) of this section can be so modified that it need not (under the terms of paragraphs (1) through (4) of subsection (a) of this section) be refused admission, the Commission may defer final determination as to the admission of such product and, in accordance with such regulations as the Commission and the Secretary of the Treasury shall jointly agree to, permit such product to be delivered from customs custody under bond for the purpose of permitting the owner or consignee an opportunity to so modify such product.

(d) Supervision of modifications

All actions taken by an owner or consignee to modify such product under subsection (c) of this section shall be subject to the supervision of an officer or employee of the Commission and of the Department of the Treasury. If it appears to the Commission that the product cannot be so modified or that the owner or consignee is not proceeding satisfactorily to modify such product, it shall be refused admission into the customs territory of the United States, and the Commission may direct the Secretary to demand redelivery of the product into customs custody, and to seize the product in accordance with section 2071(b) of this title if it is not so redelivered.

(e) Product destruction

Products refused admission into the customs territory of the United States under this section must be exported, except that upon application, the Secretary of the Treasury may permit the destruction of the product in lieu of exportation. If the owner or consignee does not export the product within a reasonable time, the Department of the Treasury may destroy the product.

(f) Payment of expenses occasioned by refusal of admission

All expenses (including travel, per diem or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in this section (the amount of such expenses to be determined in accordance with regulations of the Secretary of the Treasury) and all expenses in connection with the storage, cartage, or labor with respect to any consumer product refused admission under this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

(g) Importation conditioned upon manufacturer's compliance

The Commission may, by rule, condition the importation of a consumer product on the manufacturer's compliance with the inspection and recordkeeping requirements of this chapter and the Commission's rules with respect to such requirements.

(Pub. L. 92-573, § 17, Oct. 27, 1972, 86 Stat. 1223.)

REFERENCES IN TEXT

General headnote 2 to the Tariff Schedules of the United States, referred to in subsec. (a), is set forth in section 1202(2) of Title 19, Customs Duties.

§ 2067. Exports

This chapter shall not apply to any consumer product if (1) it can be shown that such product is manufactured, sold, or held for sale for export from the United States (or that such product was imported for export), unless such consumer product is in fact distributed in commerce for use in the United States, and (2) such consumer product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such consumer product is intended for export; except that this chapter shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States.

(Pub. L. 92-573, § 18, Oct. 27, 1972, 86 Stat. 1224.)

§ 2068. Prohibited acts

(a) It shall be unlawful for any person to—

(1) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which is not in conformity with an applicable consumer product safety standard under this chapter;

(2) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which has been declared a banned hazardous product by a rule under this chapter;

(3) fail or refuse to permit access to or copying of records, or fail or refuse to establish or maintain records, or fail or refuse to make reports or provide information, or fail or refuse to permit entry or inspection, as required under this chapter or rule thereunder;

(4) fail to furnish information required by section 2064(b) of this title;

(5) fail to comply with an order issued under section 2064(c) or (d) of this title (relating to notification, to repair, replacement, and refund, and to prohibited acts);

(6) fail to furnish a certificate required by section 2063 of this title or issue a false certificate if such person in the exercise of due care has reason to know that such certificate is false or misleading in any material respect; or to fail to comply with any rule under section 2063(c) of this title (relating to labeling);

(7) fail to comply with any rule under section 2058(d)(2) of this title (relating to stockpiling); or

(8) fail to comply with any rule under section 2062 of this title (relating to prior notice and description of new consumer products); or

(9) fail to comply with any rule under section 2076(e) of this title (relating to provision of performance and technical data).

(b) Paragraphs (1) and (2) of subsection (a) of this section shall not apply to any person (1) who holds a certificate issued in accordance with section 2063(a) of this title to the effect that such consumer product conforms to all applicable consumer product safety rules, unless such person knows that such consumer product does not conform, or (2) who relies in good faith on the representation of the manufacturer or a distributor of such product that the product is not subject to an applicable product safety rule.

(Pub. L. 92-573, § 19, Oct. 27, 1972, 86 Stat. 1224; Pub. L. 94-284, §§ 12(b), 13(a), May 11, 1976, 90 Stat. 508, 509.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-284 substituted "to" for "and to" and inserted ",and to prohibited acts" following "refund" in par. (5), inserted "or fail or refuse to establish or maintain records," following "copying of records," in par. (3), and added pars. (8) and (9).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2055, 2069, 2070, 2071 of this title.

§ 2069. Civil penalties

(a) Amount of penalty

(1) Any person who knowingly violates section 2068 of this title shall be subject to a civil penalty not to exceed $2,000 for each such violation. Subject to paragraph (2), a violation of section 2068(a)(1), (2), (4), (5), (6), (7), (8), or (9) of this title shall constitute a separate offense with respect to each consumer product involved, except that the maximum civil penalty shall not exceed $500,000 for any related series of violations. A violation of section 2068(a)(3) of this title shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed $500,000 for any related series of violations.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of paragraph (1) or (2) of section 2068(a) of this title—

(A) if the person who violated such paragraphs is not the manufacturer or private labeler or a distributor of the products involved, and

(B) if such person did not have either (i) actual knowledge that his distribution or sale of the product violated such paragraphs or (ii) notice from the Commission that such distribution or sale would be a violation of such paragraphs.

(b) Compromise of penalty

Any civil penalty under this section may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated and in what amount, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(c) Definition of "knowingly"

As used in the first sentence of subsection (a)(1) of this section, the term "knowingly" means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

(Pub. L. 92-573, § 20, Oct. 27, 1972, 86 Stat. 1225; Pub. L. 94-284, § 13(b), May 11, 1976, 90 Stat. 509.)

AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94-284 added reference to pars. (8) and (9).

§ 2070. Criminal penalties

(a) Any person who knowingly and willfully violates section 2068 of this title after having received notice of noncompliance from the Commission shall be fined not more than $50,000 or be imprisoned not more than one year, or both.

(b) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of section 2068 of this title, and who has knowledge of notice of noncompliance received by the corporation from the Commission, shall be subject to penalties under this section without regard to any penalties to which that corporation may be subject under subsection (a) of this section.

(Pub. L. 92-573, § 21, Oct. 27, 1972, 86 Stat. 1225.)

§ 2071. Injunctive enforcement and seizure

(a) The United States district courts shall have jurisdiction to take the following action:

(1) Restrain any violation of section 2068 of this title.

(2) Restrain any person from manufacturing for sale, offering for sale, distributing in commerce, or importing into the United States a product in violation of an order in effect under section 2064(d) of this title.

(3) Restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule.

Such actions may be brought by the Commission (without regard to section 2076(b)(7)(A) of this title) or by the Attorney General in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section process may be served on a defendant in any other district in which the defendant resides or may be found.

(b) Any consumer product—

(1) which fails to conform with an applicable consumer product safety rule, or

(2) the manufacture for sale, offering for sale, distribution in commerce, or the importation into the United States of which has been prohibited by an order in effect under section 2064(d) of this title,

when introduced into or while in commerce or while held for sale after shipment in commerce shall be liable to be proceeded against on libel of information and condemned in any district court of the United States within the jurisdiction of which such consumer product is found. Proceedings in cases instituted under the authority of this subsection shall conform as nearly as possible to proceedings in rem in admiralty. Whenever such proceedings involving substantially similar consumer products are pending in courts of two or more judicial districts they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest upon notice to all other parties in interest.

(Pub. L. 92-573, § 22, Oct. 27, 1972, 86 Stat. 1225; Pub. L. 94-284, §§ 11(b), 12(c), May 11, 1976, 90 Stat. 507, 508.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-284, §§ 11(b), 12(c)(1), designated existing provision as par. (1) and (3), added par. (2), and in the provision following par. (3) substituted "(without regard to section 2076(b)(7)(A) of this title)" for "(with the concurrence of the Attorney General)".

Subsec. (b). Pub. L. 94-284, § 12(c)(2), added provision designated as par. (2), which included within consumer products liable to proceedings, a product of which the manufacture for sale, offering for sale, distribution in commerce, or importation into the United States has been prohibited.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2066 of this title.

§ 2072. Suits for damages by persons injured

(a) Any person who shall sustain injury by reason of any knowing (including willful) violation of a consumer product safety rule, or any other rule or order issued by the Commission may sue any person who knowingly (including willfully) violated any such rule or order in any district court of the United States in the district in which the defendant resides or is found or has an agent, subject to the provisions or section 1331 of title 28 as to the amount in controversy, shall recover damages sustained and may, if the court determines it to be in the interest of justice, recover the costs of suit, including reasonable attorneys' fees (determined in accordance with section 2059(e)(4) of this title) and reasonable expert witnesses' fees.

(b) The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by common law or under Federal or State law.

(Pub. L. 92-573, § 23, Oct. 27, 1972, 86 Stat. 1226; Pub. L. 94-284, § 10(c), May 11, 1976, 90 Stat. 507.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-284 substituted "shall" for "and shall" and provision permitting the court to award costs in the interest of justice for a prior provision which permitted the court to award costs in its discretion.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2059 of this title.

§ 2073. Private enforcement

Any interested person may bring an action in any United States district court for the district in which the defendant is found or transacts business to enforce a consumer product safety rule or an order under section 2064 of this title, and to obtain appropriate injunctive relief. Not less than thirty days prior to the commencement of such action, such interested person shall give notice by registered mail to the Commission, to the Attorney General, and to the person against whom such action is directed. Such notice shall state the nature of the alleged violation of any such standard or order, the relief to be requested, and the court in which the action will be brought. No separate suit shall be brought under this section if at the time the suit is brought the same alleged violation is the subject of a pending civil or criminal action by the United States under this chapter. In any action under this section the court may in the interest of justice award the costs of suit, including reasonable attorneys' fees (determined in accordance with section 2059(e)(4) of this title) and reasonable expert witnesses' fees.

(Pub. L. 92-573, § 24, Oct. 27, 1972, 86 Stat. 1226; Pub. L. 94-284, § 10(d), May 11, 1976, 90 Stat. 507.)

AMENDMENTS

1976—Pub. L. 94-284 substituted provision permitting the court to award costs in the interest of justice for the provision which permitted costs to be demanded as part of the complaint and the court to award them to the prevailing party.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2059 of this title.

§ 2074. Private remedies

(a) Liability at common law or under State statute not relieved by compliance

Compliance with consumer product safety rules or other rules or orders under this chapter shall not relieve any person from liability at common law or under State statutory law to any other person.

(b) Evidence of Commission's inaction inadmissible in actions relating to consumer products

The failure of the Commission to take any action or commence a proceeding with respect to the safety of a consumer product shall not be admissible in evidence in litigation at common law or under State statutory law relating to such consumer product.

(c) Public information

Subject to sections 2055(a)(2) and 2055(b) of this title but notwithstanding section 2055(a)(1) of this title, (1) any accident or investigation report made under this chapter by an officer or employee of the Commission shall be made available to the public in a manner which will not identify any injured person or any person treating him, without the consent of the person so identified, and (2) all reports on research projects, demonstration projects, and other related activities shall be public information.

(Pub. L. 92-573, § 25, Oct. 27, 1972, 86 Stat. 1227.)

§ 2075. State standards

(a) State compliance to Federal standards

Whenever a consumer product safety standard under this chapter is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard.

(b) Consumer product safety requirements which impose performance standards more stringent than Federal standards

Subsection (a) of this section does not prevent the Federal Government or the government of any State or political subdivision of a State from establishing or continuing in effect a safety requirement applicable to a consumer product for its own use which requirement is designed to protect against a risk of injury associated with the product and which is not identical to the consumer product safety standard applicable to the product under this chapter if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of injury than the standard applicable under this chapter.

(c) Exemptions

Upon application of a State or political subdivision of a State, the Commission may by rule, after notice and opportunity for oral presentation of views, exempt from the provisions of subsection (a) of this section (under such conditions as it may impose in the rule) any proposed safety standard or regulation which is described in such application and which is designed to protect against a risk of injury associated with a consumer product subject to a consumer product safety standard under this chapter if the State or political subdivision standard or regulation—

(1) provides a significantly higher degree of protection from such risk of injury than the consumer product safety standard under this chapter, and

(2) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision standard or regulation on interstate commerce, the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such standard or regulation, the cost of complying with such standard or regulation, the geographic distribution of the consumer product to which the standard or regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or regulation, and the need for a national, uniform standard under this chapter for such consumer product.

(Pub. L. 92-573, § 26, Oct. 27, 1972, 86 Stat. 1227; Pub. L. 94-284, § 17(d), May 11, 1976, 90 Stat. 514.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-284 substituted provision that a standard provide a significantly higher degree of protection from the risk of injury for the provision that the standard impose a higher level of performance.

Subsec. (c). Pub. L. 94-284 substituted the requirement that a state standard provide a significantly higher degree of protection from the risk of injury than the standard under this chapter for the requirement that the state standard impose a higher level of performance, eliminated the requirement of a compelling local condition, and added the requirement that the Commission make specific findings in determining the burden on interstate commerce.

§ 2076. Additional functions of Consumer Product Safety Commission

(a) Authority to conduct hearings or other inquiries

The Commission may, by one or more of its members or by such agents or agency as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions anywhere in the United States. A Commissioner who participates in such a hearing or other inquiry shall not be disqualified solely by reason of such participation from subsequently participating in a decision of the Commission in the same manner. The Commission shall publish notice of any proposed hearing in the Federal Register and shall afford a reasonable opportunity for interested persons to present relevant testimony and data.

(b) Commission powers

The Commission shall also have the power—

(1) to require, by special or general orders, any person to submit in writing such reports and answers to questions as the Commission may prescribe; and such submission shall be made within such reasonable period and under oath or otherwise as the Commission may determine;

(2) to administer oaths;

(3) to require by subpena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection;

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States;

(6) to accept gifts and voluntary and uncompensated services, notwithstanding the provisions of section 665(b) of title 31;

(7) to—

(A) initiate, prosecute, defend, or appeal (other than to the Supreme Court of the United States), through its own legal representative and in the name of the Commission, any civil action if the Commission makes a written request to the Attorney General for representation in such civil action and the Attorney General does not within the 45-day period beginning on the date such request was made notify the Commission in writing that the Attorney General will represent the Commission in such civil action, and

(B) initiate, prosecute, or appeal, through its own legal representative, with the concurrence of the Attorney General or through the Attorney General, any criminal action,

for the purpose of enforcing the laws subject to its jurisdiction;

(8) to lease buildings or parts of buildings in the District of Columbia, without regard to the Act of March 3, 1877 (40 U.S.C. 34), for the use of the Commission; and

(9) to delegate any of its functions or powers, other than the power to issue subpenas under paragraph (3), to any officer or employee of the Commission.

(c) Noncompliance with subpena or Commission order; contempt

Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Commission (subject to subsection (b)(7) of this section) or by the Attorney General, in case of refusal to obey a subpena or order of the Commission issued under subsection (b) of this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(d) Disclosure of information

No person shall be subject to civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the Commission.

(e) Performance and technical data

The Commission may by rule require any manufacturer of consumer products to provide to the Commission such performance and technical data related to performance and safety as may be required to carry out the purposes of this chapter, and to give such notification of such performance and technical data at the time of original purchase to prospective purchasers and to the first purchaser of such product for purposes other than resale, as it determines necessary to carry out the purposes of this chapter.

(f) Purchase of consumer products by Commission

For purposes of carrying out this chapter, the Commission may purchase any consumer product and it may require any manufacturer, distributor, or retailer of a consumer product to sell the product to the Commission at manufacturer's, distributor's, or retailer's cost.

(g) Contract authority

The Commission is authorized to enter into contracts with governmental entities, private organizations, or individuals for the conduct of activities authorized by this chapter.

(h) Research, development, and testing facilities

The Commission may plan, construct, and operate a facility or facilities suitable for research, development, and testing of consumer products in order to carry out this chapter.

(i) Recordkeeping; audit

(1) Each recipient of assistance under this chapter pursuant to grants or contracts entered into under other than competitive bidding procedures shall keep such records as the Commission by rule shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project undertaken in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Commission and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the grants or contracts entered into under this chapter under other than competitive bidding procedures.

(j) Report to President and Congress

The Commission shall prepare and submit to the President and the Congress at the beginning of each regular session of Congress a comprehensive report on the administration of this chapter for the preceding fiscal year. Such report shall include—

(1) a thorough appraisal, including statistical analyses, estimates, and long-term projections, of the incidence of injury and effects to the population resulting from consumer products, with a breakdown, insofar as practicable, among the various sources of such injury;

(2) a list of consumer product safety rules prescribed or in effect during such year;

(3) an evaluation of the degree of observance of consumer product safety rules, including a list of enforcement actions, court decisions, and compromises of alleged violations, by location and company name;

(4) a summary of outstanding problems confronting the administration of this chapter in order of priority;

(5) an analysis and evaluation of public and private consumer product safety research activities;

(6) a list, with a brief statement of the issues, of completed or pending judicial actions under this chapter;

(7) the extent to which technical information was disseminated to the scientific and commercial communities and consumer information was made available to the public;

(8) the extent of cooperation between Commission officials and representatives of industry and other interested parties in the implementation of this chapter, including a log or summary of meetings held between Commis-

sion officials and representatives of industry and other interested parties;

(9) an appraisal of significant actions of State and local governments relating to the responsibilities of the Commission; and

(10) such recommendations for additional legislation as the Commission deems necessary to carry out the purposes of this chapter.

(k) Budget estimates and requests; legislative recommendations; testimony; comments on legislation

(1) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of that estimate or request to the Congress.

(2) Whenever the Commission submits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

(*l*) Report to the House of Representatives and the Senate of proposed consumer product safety rule

(1) Except as provided in paragraph (2)—

(A) the Commission shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives each consumer product safety rule proposed after May 11, 1976, and each regulation proposed by the Commission after such date under section 1261 or 1262 of this title, section 1472 of this title, or section 1193 of this title; and

(B) no consumer product safety rule and no regulation under a section referred to in subparagraph (A) may be adopted by the Commission before the thirtieth day after the date the proposed rule or regulation upon which such rule or regulation was based was transmitted pursuant to subparagraph (A).

(2) Paragraph (1) does not apply with respect to a regulation under section 1261(q) of this title respecting a hazardous substance the distribution of which is found under paragraph (2) of section 1261(q) of this title to present an imminent hazard or a regulation under section 1262(e) of this title respecting a toy or other article intended for use by children the distribution of which is found under paragraph (2) of section 1262(e) of this title to present an imminent hazard.

(Pub. L. 92-573, § 27, Oct. 27, 1972, 86 Stat. 1227; Pub. L. 94-273, § 31, Apr. 21, 1976, 90 Stat. 380; Pub. L. 94-284, §§ 8(b), 11(c), (d), 14, May 11, 1976, 90 Stat. 506-509; S.Res. 4, Feb. 4, 1977.)

AMENDMENTS

1976—Subsec. (b)(7). Pub. L. 94-284, § 11(c), permitted the Commission to initiate, defend, prosecute, or appeal any civil action through its own legal representative provided that the Commission make a written request to the Attorney General for such representation and the Attorney General fail within a 45 day period to notify the Commission in writing that the Attorney General will represent the Commission, and with regard to criminal action, permitted the Commission to initiate, prosecute, or appeal with its own legal representative, with the concurrence of the Attorney General, or through the Attorney General.

Subsec. (b)(8). Pub. L. 94-284, § 8(b), added par. (8). Former par. (8) redesignated par. (9).

Subsec. (b)(9). Pub. L. 94-284, § 8(b), redesignated former par. (8) as par (9).

Subsec. (c). Pub. L. 94-284, § 11(d), substituted "(subject to subsection (b)(7) of this section)" for "with the concurrence of the Attorney General".

Subsec. (j). Pub. L. 94-273 substituted "at the beginning of each regular session of Congress" for "on or before October 1 of each year".

Subsec. (*l*). Pub. L. 94-284, § 14, added subsec. (*l*).

CHANGE OF NAME

The Committee on Commerce of the Senate was abolished and replaced by the Committee on Commerce, Science, and Transportation, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), aproved Feb. 4, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2064, 2068, 2071, 2081 of this title.

§ 2077. Product Safety Advisory Council

(a) Establishment; membership

The Commission shall establish a Product Safety Advisory Council which it may consult before prescribing a consumer product safety rule or taking other action under this chapter. The Council shall be appointed by the Commission and shall be composed of fifteen members, each of whom shall be qualified by training and experience in one or more of the fields applicable to the safety of products within the jurisdiction of the Commission. The Council shall be constituted as follows:

(1) five members shall be selected from governmental agencies including Federal, State, and local governments;

(2) five members shall be selected from consumer product industries including at least one representative of small business; and

(3) five members shall be selected from among consumer organizations, community organizations, and recognized consumer leaders.

(b) Meetings

The Council shall meet at the call of the Commission, but not less often than four times during each calendar year.

(c) Proposal of consumer product safety rules

The Council may propose consumer product safety rules to the Commission for its consideration and may function through subcommittees of its members. All proceedings of the Council shall be public, and a record of each proceeding shall be available for public inspection.

(d) Compensation; travel pay

Members of the Council who are not officers or employees of the United States shall, while attending meetings or conferences of the Council or while otherwise engaged in the business of the Council, be entitled to receive compensation at a rate fixed by the Commission, not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5. Payments under this subsection shall not render members of the Council officers or employees of the United States for any purpose.

(Pub. L. 92-573, § 28, Oct. 27, 1972, 86 Stat. 1230.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (d), is set out under section 5332 of Title 5, Government Organization and Employees.

TERMINATION OF ADVISORY COUNCILS

Advisory Councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2061 of this title.

§ 2078. Cooperation with States and other Federal agencies

(a) Programs to promote Federal-State cooperation

The Commission shall establish a program to promote Federal-State cooperation for the purposes of carrying out this chapter. In implementing such program the Commission may—

(1) accept from any State or local authorities engaged in activities relating to health, safety, or consumer protection assistance in such functions as injury data collection, investigation, and educational programs, as well as other assistance in the administration and enforcement of this chapter which such States or localities may be able and willing to provide and, if so agreed, may pay in advance or otherwise for the reasonable cost of such assistance, and

(2) commission any qualified officer or employee of any State or local agency as an officer of the Commission for the purpose of conducting examinations, investigations, and inspections.

(b) Appropriateness of State and local programs

In determining whether such proposed State and local programs are appropriate in implementing the purposes of this chapter, the Commission shall give favorable consideration to programs which establish separate State and local agencies to consolidate functions relating to product safety and other consumer protection activities.

(c) Cooperation of Federal departments and agencies

The Commission may obtain from any Federal department or agency such statistics, data, program reports, and other materials as it may deem necessary to carry out its functions under this chapter. Each such department or agency may cooperate with the Commission and, to the extent permitted by law, furnish such materials to it. The Commission and the heads of other departments and agencies engaged in administering programs related to product safety shall, to the maximum extent practicable, cooperate and consult in order to insure fully coordinated efforts.

(d) Utilization of National Bureau of Standards

The Commission shall, to the maximum extent practicable, utilize the resources and facilities of the National Bureau of Standards, on a reimbursable basis, to perform research and analyses related to risks of injury associated with consumer products (including fire and flammability risks), to develop test methods, to conduct studies and investigations, and to provide technical advice and assistance in connection with the functions of the Commission.

(e) Copies of accident or investigation reports to other agencies; conditions

The Commission may provide to another Federal agency or a State or local agency or authority engaged in activities relating to health, safety, or consumer protection, copies of any accident or investigation report made under this chapter by any officer, employee, or agent of the Commission only if (1) information which under section 2055(a)(2) of this title is to be considered confidential is not included in any copy of such report which is provided under this subsection; and (2) each Federal agency and State and local agency and authority which is to receive under this subsection a copy of such report provides assurances satisfactory to the Commission that the identity of any injured person and any person who treated an injured person will not, without the consent of the person identified, be included in—

(A) any copy of any such report, or

(B) any information contained in any such report,

which the agency or authority makes available to any member of the public. No Federal agency or State or local agency or authority may disclose to the public any information contained in a report received by the agency or authority under this subsection unless with respect to such information the Commission has complied with the applicable requirements of section 2055(b) of this title.

(Pub. L. 92-573, § 29, Oct. 27, 1972, 86 Stat. 1230; Pub. L. 94-284, § 15, May 11, 1976, 90 Stat. 510.)

AMENDMENTS

1976—Subsec. (e). Pub. L. 94-284 added subsec. (e).

§ 2079. Transfers of functions

(a) Hazardous substances and poisons

The functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.] and the Poison Prevention Packaging Act of 1970 [15 U.S.C. 1471 et seq.] are transferred to the Commission. The functions of the Secretary of Health, Education, and Welfare under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], to the extent such functions relate to the administration and enforcement of the Poison Prevention Packaging Act of 1970, are transferred to the Commission.

(b) Flammable fabrics

The functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under the Flammable Fabrics Act [15 U.S.C. 1191 et seq.] are transferred to the Commission. The functions of the Federal Trade Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], to the extent such functions relate to the administration and enforcement of the Flammable Fabrics Act, are transferred to the Commission.

(c) Household refrigerators

The functions of the Secretary of Commerce and the Federal Trade Commission under the Act of August 2, 1956 [15 U.S.C. 1211 et seq.] are transferred to the Commission.

(d) Regulation by Commission of consumer products in accordance with other provisions of law

A risk of injury which is associated with a consumer product and which could be eliminated or reduced to a sufficient extent by action under the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.], the Poison Prevention Packaging Act of 1970 [15 U.S.C. 1471 et seq.], or the Flammable Fabrics Act [15 U.S.C. 1191 et seq.] may be regulated under this chapter only if the Commission by rule finds that it is in the public interest to regulate such risk of injury under this chapter. Such a rule shall identify the risk of injury proposed to be regulated under this chapter and shall be promulgated in accordance with section 553 of title 5; except that the period to be provided by the Commission pursuant to subsection (c) of such section for the submission of data, views, and arguments respecting the rule shall not exceed thirty days from the date of publication pursuant to subsection (b) of such section of a notice respecting the rule.

(e) Transfer of personnel, property, records, etc.; continued application of orders, rules, etc.

(1)(A) All personnel, property, records, obligations, and commitments, which are used primarily with respect to any function transferred under the provisions of subsections (a), (b) and (c) of this section shall be transferred to the Commission, except those associated with fire and flammability research in the National Bureau of Standards. The transfer of personnel pursuant to this paragraph shall be without reduction in classification or compensation for one year after such transfer, except that the Chairman of the Commission shall have full authority to assign personnel during such one-year period in order to efficiently carry out functions transferred to the Commission under this section.

(B) Any commissioned officer of the Public Health Service who upon the day before the effective date of this section, is serving as such officer primarily in the performance of functions transferred by this chapter to the Commission, may, if such officer so elects, acquire competitive status and be transferred to a competitive position in the Commission subject to subparagraph (A) of this paragraph, under the terms prescribed in paragraphs (3) through (8)(A) of section 15(b) of the Clean Air Amendments of 1970.

(2) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges (A) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this section by any department or agency, any functions of which are transferred by this section, and (B) which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Commission, by any court of competent jurisdiction, or by operation of law.

(3) The provisions of this section shall not affect any proceedings pending at the time this section takes effect before any department or agency, functions of which are transferred by this section; except that such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Commission. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Commission, by a court of competent jurisdiction, or by operation of law.

(4) The provisions of this section shall not affect suits commenced prior to the date this section takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this section had not been enacted; except that if before the date on which this section takes effect, any department or agency (or officer thereof in his official capacity) is a party to a suit involving functions transferred to the Commission, then such suit shall be continued by the Commission. No cause of action, and no suit, action, or other proceeding, by or against any department or agency (or officer thereof in his official capacity) functions of which are transferred by this section, shall abate by reason of the enactment of this section. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or the Commission as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph.

(f) Definition of "function"

For purposes of this section, (1) the term "function" includes power and duty, and (2) the transfer of a function, under any provision of law, of an agency or the head of a department shall also be a transfer of all functions under such law which are exercised by any office or officer of such agency, or department.

(Pub. L. 92-573, § 30, Oct. 27, 1972, 86 Stat. 1231; Pub. L. 94-284, §§ 3(f), 16, May 11, 1976, 90 Stat. 504, 510.)

REFERENCES IN TEXT

The Federal Hazardous Substances Act, referred to in subsecs. (a) and (d), is Pub. L. 86-613, July 12, 1960, 74 Stat. 372, which is classified generally to chapter 30

(§ 1261 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables volume.

The Poison Prevention Packaging Act of 1970, referred to in subsecs. (a) and (d), is Pub. L. 91-601, Dec. 30, 1970, 84 Stat. 1670, which is classified generally to chapter 39A (§ 1471 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1471 of this title and Tables volume.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (a), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables volume.

The Flammable Fabrics Act, referred to in subsecs. (b) and (d), is act June 30, 1953, ch. 164, 67 Stat. 111, which is classified generally to chapter 25 (§ 1191 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1191 of this title and Tables volume.

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

The Act of August 2, 1956, referred to in subsec. (c), is act Aug. 2, 1956, ch. 890, 70 Stat. 953, which is classified generally to chapter 26 (§ 1211 et seq.) of this title. For complete classification of this Act to the Code, see Tables volume.

For the effective date of this section or, alternatively, the time or date this section takes effect, referred to in subsec. (e)(1)(B), (2), (3), and (4), see section 34(2) of Pub. L. 92-573, set out as an Effective Date note under section 2051 of this title.

Paragraphs (3) through (8)(A) of section 15(b) of the Clean Air Amendments of 1970, referred to in subsec. (e)(1)(B), are pars. (3) through (8)(A) of section 15(b) of Pub. L. 91-604, Dec. 31, 1970, 84 Stat. 1710, which is set out as a note under section 215 of Title 42, The Public Health and Welfare.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-284, § 3(f), deleted "of the Administrator of the Environmental Protection Agency and" which preceded "of the Secretary of Health, Education, and Welfare" and substituted "Federal Food, Drug, and Cosmetic Act" for "Acts amended by subsections (b) through (f) of section 7 of the Poison Prevention Act of 1970".

Subsec. (d). Pub. L. 94-284, § 16, added requirement that the Commission find by a rule, promulgated in accordance with section 553 of title 5, that it is within the public interest to regulate a risk of injury under this chapter which could be eliminated or reduced by action under the enumerated acts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2052, 2081 of this title.

§ 2080. Limitations on Consumer Product Safety Commission's jurisdiction

The Commission shall have no authority under this chapter to regulate any risk of injury associated with a consumer product if such risk could be eliminated or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.]; the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; or the Clean Air Act [42 U.S.C. 1857 et seq.]. The Commission shall have no authority under this chapter to regulate any risk of injury associated with electronic product radiation emitted from an electronic product (as such terms are defined by sections 355(1) and (2) of the Public Health Service Act [42 U.S.C. 263c(1) and (2)]) if such risk of injury may be subjected to regulation under subpart 3 of part F of title III of the Public Health Service Act. [42 U.S.C. 263b et seq.].

(Pub. L. 92-573, § 31, Oct. 27, 1972, 86 Stat. 1232.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in text, is Pub. L. 91-595, Dec. 29, 1970, 84 Stat. 1590, which is classified generally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note under section 651 of Title 29 and Tables volume.

The Atomic Energy Act of 1954, referred to in text, is act Aug. 30, 1954, ch. 1073, 68 Stat. 921, which is classified generally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title set out under section 2011 of Title 42 and Tables volume.

The Clean Air Act, referred to in text, is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, which is classified generally to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1857 of Title 42 and Tables volume.

The Public Health Service Act, referred to in text, is act July 1, 1944, ch. 373, 58 Stat. 682. Subpart 3 of Part F of title III of the Act is classified to Subpart 3 (§ 263b et seq.) of Part F of subchapter II of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables volume.

MANUFACTURE OR SALE OF FIREARMS OR FIREARM AMMUNITION

Pub. L. 94-284, § 3(e), May 11, 1976, 90 Stat. 504, provided that: "The Consumer Product Safety Commission shall make no ruling or order that restricts the manufacture or sale of firearms, firearms ammunition, or components of firearms ammunition, including black powder or gunpowder for firearms."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2052 of this title.

§ 2081. Authorization of appropriations

(a) There are authorized to be appropriated for the purposes of carrying out the provisions of this chapter (other than the provisions of section 2076(h) of this title which authorize the planning and construction of research, development, and testing facilities) and for the purpose of carrying out the functions, powers, and duties transferred to the Commission under section 2079 of this title, not to exceed—

(1) $51,000,000 for the fiscal year ending June 30, 1976;

(2) $14,000,000 for the period beginning July 1, 1976, and ending September 30, 1976;

(3) $60,000,000 for the fiscal year ending September 30, 1977; and

(4) $68,000,000 for the fiscal year ending September 30, 1978.

(b)(1) There are authorized to be appropriated such sums as may be necessary for the planning and construction of research, development and testing facilities described in section 2076(h) of this title; except that no appropriation shall be made for any such planning or construction involving an expenditure in excess of $100,000 if such planning or construction has not been approved by resolutions adopted in substantially the same form by the Committee on Interstate and Foreign Commerce of the House of Representatives, and by the Committee on Commerce of the Senate. For the purpose of securing consideration of such approval the Commission shall transmit to Congress a prospectus of the proposed facility including (but not limited to)—

(A) a brief description of the facility to be planned or constructed;

(B) the location of the facility, and an estimate of the maximum cost of the facility;

(C) a statement of those agencies, private and public, which will use such facility, together with the contribution to be made by each such agency toward the cost of such facility; and

(D) a statement of justification of the need for such facility.

(2) The estimated maximum cost of any facility approved under this subsection as set forth in the prospectus may be increased by the amount equal to the percentage increase, if any, as determined by the Commission, in construction costs, from the date of the transmittal of such prospectus to Congress, but in no event shall the increase authorized by this paragraph exceed 10 per centum of such estimated maximum cost.

(c) No funds appropriated under subsection (a) of this section may be used to pay any claim described in section 2053(h) of this title whether pursuant to a judgment of a court or under any award, compromise, or settlement of such claim made under section 2672 of title 28, or under any other provision of law.

(Pub. L. 92-573, § 32, Oct. 27, 1972, 86 Stat. 1233; Pub. L. 94-284, §§ 2, 5(b), May 11, 1976, 90 Stat. 503, 505.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-284, § 2, substituted "$51,000,000 for the fiscal year ending June 30, 1976, $14,000,000 for the period beginning July 1, 1976, and ending September 30, 1976, $60,000,000 for the fiscal year ending September 30, 1977, and $68,000,000 for the fiscal year ending September 30, 1978" for "$55,000,000 for the fiscal year ending June 30, 1973, $59,000,000 for the fiscal year ending June 30, 1974, and $64,000,000 for the fiscal year ending June 30, 1975".

Subsec. (c). Pub. L. 94-284, § 5(b), added subsec. (c).

CHAPTER 48—HOBBY PROTECTION

Sec.

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    (a) Political items.
    (b) Coins and other numismatic items.
    (c) Rules and regulations.
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2102. Private enforcement.
2103. Enforcement by Federal Trade Commission.
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§ 2101. Marking requirements

(a) Political items

The manufacture in the United States, or the importation into the United States, for introduction into or distribution in commerce of any imitation political item which is not plainly and permanently marked with the calendar year in which such item was manufactured, is unlawful and is an unfair or deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(b) Coins and other numismatic items

The manufacture in the United States, or the importation into the United States, for introduction into or distribution in commerce of any imitation numismatic item which is not plainly and permanently marked "copy", is unlawful and is an unfair or deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(c) Rules and regulations

The Federal Trade Commission shall prescribe rules for determining the manner and form in which items described in subsection (a) or (b) of this section shall be permanently marked.

(d) Exemption

Subsections (a) and (b), and regulations under subsection (c) of this section, shall not apply to any common carrier or contract carrier or freight forwarder with respect to an imitation political item or imitation numismatic item received, shipped, delivered, or handled by it for shipment in the ordinary course of its business.

(Pub. L. 93-167, § 2, Nov. 29, 1973, 87 Stat. 686.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

EFFECTIVE DATE

Section 8 of Pub. L. 93-167 provided that: "This Act [this chapter] shall apply only to imitation political items and imitation numismatic items manufactured after the date of enactment of this Act [Nov. 29, 1973]."

SHORT TITLE

Section 1 of Pub. L. 93-167 provided: "That this Act [this chapter] may be cited as the 'Hobby Protection Act'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2102, 2104 of this title.

§ 2102. Private enforcement

If any person violates section 2101(a) or (b) of this title or a rule under section 2101(c) of this title, any interested person may commence a civil action for injunctive relief restraining such violation, and for damages, in any United States District Court for a district in which the defendant resides or has an agent. In any such action, the court may award the costs of the suit, including reasonable attorneys' fees.

(Pub. L. 93-167, § 3, Nov. 29, 1973, 87 Stat. 686.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2103 of this title.

§ 2103. Enforcement by Federal Trade Commission

(a) Except as provided in section 2102 of this title, this chapter shall be enforced by the Federal Trade Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(b) The Commission shall prevent any person from violating the provisions of this chapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] were incorporated into and made a part of this chapter; and any such person violating the provisions of this chapter shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act, in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though the applicable terms and provisions of the said Federal Trade Commission Act were incorporated into and made a part of this chapter.

(Pub. L. 93-167, § 4, Nov. 29, 1973, 87 Stat. 686.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

§ 2104. Imports

Any item imported into the United States in violation of section 2101(a) or (b) of this title or regulations under section 2101(c) of this title shall be subject to seizure and forfeiture under the customs laws.

(Pub. L. 93-167, § 5, Nov. 29, 1973, 87 Stat. 687).

§ 2105. Application of other laws

The provisions of this chapter are in addition to, and not in substitution for or limitation of, the provisions of any other law of the United States or of the law of any State.

(Pub. L. 93-167, § 6, Nov. 29, 1973, 87 Stat. 687.)

§ 2106. Definitions

For purposes of this chapter:

(1) The term "original political item" means any political button, poster, literature, sticker, or any advertisement produced for use in any political cause.

(2) The term "imitation political item" means an item which purports to be, but in fact is not, an original political item, or which is a reproduction, copy, or counterfeit of an original political item.

(3) The term "original numismatic item" means anything which has been a part of a coinage or issue which has been used in exchange or has been used to commemorate a person or event. Such term includes coins, tokens, paper money, and commemorative medals.

(4) The term "imitation numismatic item" means an item which purports to be, but in fact is not, an original numismatic item or which is a reproduction, copy, or counterfeit of an original numismatic item.

(5) The term "commerce" has the same meaning as such term has under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(6) The term "Commission" means the Federal Trade Commission.

(7) The term "United States" means the States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 93-167, § 7, Nov. 29, 1973, 87 Stat. 687.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in par. (5), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

CHAPTER 49—FIRE PREVENTION AND CONTROL

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§ 2201. Congressional findings

The Congress finds that—

(1) The National Commission on Fire Prevention and Control, established pursuant to Public Law 90-259, has made an exhaustive and comprehensive examination of the Nation's fire problem, has made detailed findings as to the extent of this problem in terms of human suffering and loss of life and property, and has made ninety thoughtful recommendations.

(2) The United States today has the highest per capita rate of death and property loss from fire of all the major industrialized nations in the world.

(3) Fire is an undue burden affecting all Americans, and fire also constitutes a public health and safety problem of great dimensions. Fire kills 12,000 and scars and injures 300,000 Americans each year, including 50,000 individuals who require extended hospitalization. Almost $3 billion worth of property is destroyed annually by fire, and the total economic cost of destructive fire in the United States is estimated conservatively to be $11,000,000,000 per year. Firefighting is the Nation's most hazardous profession.

(4) Such losses of life and property from fire are unacceptable to the Congress.

(5) While fire prevention and control is and should remain a State and local responsibility, the Federal Government must help if a significant reduction in fire losses is to be achieved.

(6) The fire service and the civil defense program in each locality would both benefit from closer cooperation.

(7) The Nation's fire problem is exacerbated by (A) the indifference with which some Americans confront the subject; (B) the Nation's failure to undertake enough research and development into fire and fire-related problems; (C) the scarcity of reliable data and information; (D) the fact that designers and purchasers of buildings and products generally give insufficient attention to fire safety; (E) the fact that many communities lack adequate building and fire prevention codes; and (F) the fact that local fire departments spend about 95 cents of every dollar appropriated to the fire services on efforts to extinguish fires and only about 5 cents on fire prevention.

(8) There is a need for improved professional training and education oriented toward improving the effectiveness of the fire services, including an increased emphasis on preventing fires and on reducing injuries to firefighters.

(9) A national system for the collection, analysis, and dissemination of fire data is needed to help local fire services establish research and action priorities.

(10) The number of specialized medical centers which are properly equipped and staffed for the treatment of burns and the rehabilitation of victims of fires is inadequate.

(11) The unacceptably high rates of death, injury, and property loss from fire can be reduced if the Federal Government establishes a coordinated program to support and reinforce the fire prevention and control activities of State and local governments.

(Pub. L. 93-498, § 2, Oct. 29, 1974, 88 Stat. 1535.)

References in Text

The National Commission on Fire Prevention and Control established pursuant to Pub. L. 90-259 refers to the Commission established pursuant to Pub. L. 90-259, title II, §§ 201 to 207, Mar. 1, 1968, 82 Stat. 36, which provisions were set out as a note under section 278f of this title. The Commission has expired pursuant to sections 203(c) and 207 of Pub. L. 90-259.

Short Title

Section 1 of Pub. L. 93-498 provided: "That this Act [enacting this chapter and section 290a of Title 42, The Public Health and Welfare, amending sections 278f and 1511 of this title, and repealing section 278g of this title] may be cited as the 'Federal Fire Prevention and Control Act of 1974'."

§ 2202. Declaration of purpose

It is declared to be the purpose of Congress in this chapter to—

(1) reduce the Nation's losses caused by fire through better fire prevention and control;

(2) supplement existing programs of research, training, and education, and to encourage new and improved programs and activities by State and local governments;

(3) establish the National Fire Prevention and Control Administration and the Fire Research Center within the Department of Commerce; and

(4) establish an intensified program of research into the treatment of burn and smoke injuries and the rehabilitation of victims of fires within the National Institutes of Health.

(Pub. L. 93-498, § 3, Oct. 29, 1974, 88 Stat. 1536.)

§ 2203. Definitions

As used in this chapter, the term—

(1) "Academy" means the National Academy for Fire Prevention and Control;

(2) "Administration" means the National Fire Prevention and Control Administration established pursuant to section 2204 of this title;

(3) "Administrator" means the Administrator of the National Fire Prevention and Control Administration;

(4) "fire service" means any organization in any State consisting of personnel, apparatus, and equipment which has as its purpose protecting property and maintaining the safety and welfare of the public from the dangers of fire, including a private firefighting brigade. The personnel of any such organization may be paid employees or unpaid volunteers or any combination thereof. The location of any such organization and its responsibility for extinguishment and suppression of fires may include, but need not be limited to, a Federal installation, a State, city, town, borough, parish, county, fire district, fire protection district, rural fire district, or other special district. The terms "fire prevention", "firefighting", and "fire control" relate to activities conducted by a fire service;

(5) "local" means of or pertaining to any city, town, county, special purpose district, unincorporated territory, or other political subdivision of a State;

(6) "Secretary" means the Secretary of Commerce; and

(7) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, the Trust Territory of the Pacific Islands and any other territory or possession of the United States.

(Pub. L. 93-498, § 4, Oct. 29, 1974, 88 Stat. 1536.)

§ 2204. National Fire Prevention and Control Administration

(a) Establishment

There is hereby established in the Department of Commerce an agency which shall be known as the National Fire Prevention and Control Administration.

(b) Administrator

There shall be at the head of the Administration the Administrator of the National Fire Prevention and Control Administration. The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule pay rates (5 U.S.C. 5315). The Administrator shall report and be responsible to the Secretary.

(c) Deputy Administrator

There shall be in the Administration a Deputy Administrator of the National Fire Prevention and Control Administration who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate now or hereafter provided for level V of the Executive Schedule pay rates (5 U.S.C. 5316). The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(Pub. L. 93-498, § 5, Oct. 29, 1974, 88 Stat. 1536.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2203 of this title.

§ 2205. Public education

The Administrator is authorized to take all steps necessary to educate the public and to overcome public indifference as to fire and fire prevention. Such steps may include, but are not limited to, publications, audiovisual presentations, and demonstrations. Such public education efforts shall include programs to provide specialized information for those groups of individuals who are particularly vulnerable to fire hazards, such as the young and the elderly. The Administrator shall sponsor and encourage research, testing, and experimentation to determine the most effective means of such public education.

(Pub. L. 93-498, § 6, Oct. 29, 1974, 88 Stat. 1537.)

§ 2206. National Academy for Fire Prevention and Control

(a) Establishment

The Secretary shall establish, at the earliest practicable date, a National Academy for Fire Prevention and Control. The purpose of the Academy shall be to advance the professional development of fire service personnel and of other persons engaged in fire prevention and control activities.

(b) Superintendent

The Academy shall be headed by a Superintendent, who shall be appointed by the Secretary. In exercising the powers and authority contained in this section the Superintendent shall be subject to the direction of the Administrator.

(c) Powers of Superintendent

The Superintendent is authorized to—

(1) develop and revise curricula, standards for admission and performance, and criteria for the awarding of degrees and certifications;

(2) appoint such teaching staff and other personnel as he determines to be necessary or appropriate;

(3) conduct courses and programs of training and education, as defined in subsection (d) of this section;

(4) appoint faculty members and consultants without regard to the provisions of title 5, governing appointments in the competitive service, and, with respect to temporary and intermittent services, to make appointments to the same extent as is authorized by section 3109 of title 5;

(5) establish fees and other charges for attendance at, and subscription to, courses and programs offered by the Academy. Such fees may be modified or waived as determined by the Superintendent;

(6) conduct short courses, seminars, workshops, conferences, and similar education and training activities in all parts and localities of the United States;

(7) enter into such contracts and take such other actions as may be necessary in carrying out the purposes of the Academy; and

(8) consult with officials of the fire services and other interested persons in the exercise of the foregoing powers.

(d) Program of the Academy

The Superintendent is authorized to—

(1) train fire service personnel in such skills and knowledge as may be useful to advance their ability to prevent and control fires, including, but not limited to—

(A) techniques of fire prevention, fire inspection, firefighting, and fire and arson investigation;

(B) tactics and command of firefighting for present and future fire chiefs and commanders;

(C) administration and management of fire services;

(D) tactical training in the specialized field of aircraft fire control and crash rescue;

(E) tactical training in the specialized field of fire control and rescue aboard waterborne vessels; and

(F) the training of present and future instructors in the aforementioned subjects;

(2) develop model curricula, training programs and other educational materials suitable for use at other educational institutions, and to make such materials available without charge;

(3) develop and administer a program of correspondence courses to advance the knowledge and skills of fire service personnel;

(4) develop and distribute to appropriate officials model questions suitable for use in conducting entrance and promotional examinations for fire service personnel; and

(5) encourage the inclusion of fire prevention and detection technology and practices in the education and professional practice of architects, builders, city planners, and others engaged in design and planning affected by fire safety problems.

(e) Technical assistance

The Administrator is authorized, to the extent that he determines it necessary to meet the needs of the Nation, to encourage new programs and to strengthen existing programs of education and training by local fire services, units, and departments, State and local governments, and private institutions, by providing technical assistance and advice to—

(1) vocational training programs in techniques of fire prevention, fire inspection, firefighting, and fire and arson investigation;

(2) fire training courses and programs at junior colleges; and

(3) four-year degree programs in fire engineering at colleges and universities.

(f) Assistance to state and local fire service training programs

The Administrator is authorized to provide assistance to State and local fire service training programs through grants, contracts, or otherwise. Such assistance shall not exceed 4 per centum of the amount authorized to be appropriated in each fiscal year pursuant to section 2216 of this title.

(g) Site selection

The Academy shall be located on such site as the Secretary selects, subject to the following provisions:

(1) The Secretary is authorized to appoint a Site Selection Board consisting of the Academy Superintendent and two other members to survey the most suitable sites for the location of the Academy and to make recommendations to the Secretary.

(2) The Site Selection Board in making its recommendations and the Secretary in making his final selection, shall give consideration to the training and facility needs of the Academy, environmental effects, the possibility of using a surplus Government facility, and such other factors as are deemed important and relevant. The Secretary shall make a final site selection not later than 2 years after October 29, 1974.

(h) Construction costs

Of the sums authorized to be appropriated for the purpose of implementing the programs of the Administration, not more than $9,000,000 shall be available for the construction of facilities of the Academy on the site selected under subsection (g) of this section. Such sums for such construction shall remain available until expended.

(i) Educational and professional assistance

The Administrator is authorized to—

(1) provide stipends to students attending Academy courses and programs, in amounts up to 75 per centum of the expense of attendance, as established by the Superintendent;

(2) provide stipends to students attending courses and nondegree training programs approved by the Superintendent at universities, colleges, and junior colleges, in amounts up to 50 per centum of the cost of tuition;

(3) make or enter into contracts to make payments to institutions of higher education for loans, not to exceed $2,500 per academic year for any individual who is enrolled on a full-time basis in an undergraduate or graduate program of fire research or engineering which is certified by the Superintendent. Loans under this paragraph shall be made on such terms and subject to such conditions as the Superintendent and each institution involved may jointly determine; and

(4) establish and maintain a placement and promotion opportunities center in cooperation with the fire services, for firefighters who wish to learn and take advantage of different or better career opportunities. Such center shall not limit such assistance to students and graduates of the Academy, but shall undertake to assist all fire service personnel.

(j) Board of Visitors

Upon establishment of the Academy, the Secretary shall establish a procedure for the selection of professionals in the field of fire safety, fire prevention, fire control, research and development in fire protection, treatment and rehabilitation of fire victims, or local government services management to serve as members of a Board of Visitors for the Academy. Pursuant to such procedure, the Secretary shall select eight such persons to serve as members of such Board of Visitors to serve such terms as the Secretary may prescribe. The function of such Board shall be to review annually the program of the Academy and to make comments and recommendations to the Secretary regarding the operation of the Academy and any improvements therein which such Board deems appropriate. Each member of such Board shall be reimbursed for any expenses actually incurred by him in the performance of his duties as a member of such Board.

(k) Accreditation

The Superintendent is authorized to establish a Committee on Fire Training and Education which shall inquire into and make recommendations regarding the desirability of establishing a mechanism for accreditation of fire training and education programs and courses, and the role which the Academy should play if such a mechanism is recommended. The Committee shall consist of the Superintendent as Chairman and eighteen other members appointed by the Administrator from among individuals and organizations possessing special knowledge and experience in the field of fire training and education or related fields. The Committee shall submit to the Administrator within two years after its appointment, a full and complete report of its findings and recommendations. Upon the submission of such report, the Committee shall cease to exist. Each appointed member of the Committee shall be reimbursed for expenses actually incurred in the performance of his duties as a member.

(*l*) Admission

The Superintendent is authorized to admit to the courses and programs of the Academy individuals who are members of the firefighting, rescue, and civil defense forces of the Nation and such other individuals, including candidates for membership in these forces, as he determines can benefit from attendance. Students shall be admitted from any State, with due regard to adequate representation in the student body of all geographic regions of the Nation. In selecting students, the Superintendent may seek nominations and advice from the fire services and other organizations which wish to send students to the Academy.

(Pub. L. 93-498, § 7, Oct. 29, 1974, 88 Stat. 1537.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (c)(4), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

§ 2207. Fire technology

(a) Development

The Administrator shall conduct a continuing program of development, testing, and evaluation of equipment for use by the Nation's fire, rescue, and civil defense services, with the aim of making available improved suppression, protective, auxiliary, and warning devices incorporating the latest technology. Attention shall be given to the standardization, compatibility, and interchangeability of such equipment. Such development, testing, and evaluation activities shall include, but need not be limited to—

(1) safer, less cumbersome articles of protective clothing, including helmets, boots, and coats;

(2) breathing apparatus with the necessary duration of service, reliability, low weight, and ease of operation for practical use;

(3) safe and reliable auxiliary equipment for use in fire prevention, detection, and control, such as fire location detectors, visual and audio communications equipment, and mobile equipment;

(4) special clothing and equipment needed for forest fires, brush fires, oil and gasoline fires, aircraft fires and crash rescue, fires occurring aboard waterborne vessels, and in other special firefighting situations;

(5) fire detectors and related equipment for residential use with high sensitivity and reliability, and which are sufficiently inexpensive to purchase, install, and maintain to insure wide acceptance and use;

(6) in-place fire prevention systems of low cost and of increased reliability and effectiveness;

(7) methods of testing fire alarms and fire protection devices and systems on a non-interference basis;

(8) the development of purchase specifications, standards, and acceptance and validation test procedures for all such equipment and devices; and

(9) operation tests, demonstration projects, and fire investigations in support of the activities set forth in this section.

(b) Limitation on manufacture and sale of equipment

The Administration shall not engage in the manufacture or sale of any equipment or device developed pursuant to this section, except to the extent that it deems it necessary to adequately develop, test, or evaluate such equipment or device.

(c) Management studies

(1) The Administrator is authorized to conduct, directly or through contracts or grants, studies of the operations and management aspects of fire services, utilizing quantitative techniques, such as operations research, management economics, cost effectiveness studies, and such other techniques and methods as may be applicable and useful. Such studies shall include, but need not be limited to, the allocation of resources, the optimum location of fire stations, the optimum geographical area for an integrated fire service, the manner of responding to alarms, the operation of citywide and regional fire dispatch centers, firefighting under conditions of civil disturbance, and the effectiveness, frequency, and methods of building inspections.

(2) The Administrator is authorized to conduct, directly or through contracts or grants, research concerning the productivity and efficiency of fire service personnel, the job categories and skills required by fire services under varying conditions, the reduction of injuries to fire service personnel, the most effective fire prevention programs and activities, and techniques for accuracy measuring and analyzing the foregoing.

(3) The Administrator is authorized to conduct, directly or through contracts, grants, or other forms of assistance, development, testing and demonstration projects to the extent deemed necessary to introduce and to encourage the acceptance of new technology, standards, operating methods, command techniques, and management systems for utilization by the fire services.

(4) The Administrator is authorized to assist the Nation's fire services, directly or through

contracts, grants, or other forms of assistance, to measure and evaluate, on a cost-benefit basis, the effectiveness of the programs and activities of each fire service and the predictable consequences on the applicable local fire services of coordination or combination, in whole or in part, in a regional, metropolitan, or statewide fire service.

(d) Rural assistance

The Administrator is authorized to assist the Nation's fire services, directly or through contracts, grants, or other forms of assistance, to sponsor and encourage research into approaches, techniques, systems, and equipment to improve fire prevention and control in the rural and remote areas of the Nation.

(e) Coordination

In establishing and conducting programs under this section, the Administrator shall take full advantage of applicable technological developments made by other departments and agencies of the Federal Government, by State and local governments, and by business, industry, and nonprofit associations.

(Pub. L. 93-498, § 8, Oct. 29, 1974, 88 Stat. 1540.)

§ 2208. National Fire Data Center

(a) Functions

The Administrator shall operate, directly or through contracts or grants, an integrated, comprehensive National Fire Data Center for the selection, analysis, publication, and dissemination of information related to the prevention, occurrence, control, and results of fires of all types. The program of such Data Center shall be designed to (1) provide an accurate nationwide analysis of the fire problem, (2) identify major problem areas, (3) assist in setting priorities, (4) determine possible solutions to problems, and (5) monitor the progress of programs to reduce fire losses. To carry out these functions, the Data Center shall gather and analyze—

(1) information on the frequency, causes, spread, and extinguishment of fires;

(2) information on the number of injuries and deaths resulting from fires, including the maximum available information on the specific causes and nature of such injuries and deaths, and information on property losses;

(3) information on the occupational hazards faced by firefighters, including the causes of deaths and injuries arising, directly and indirectly, from firefighting activities;

(4) information on all types of firefighting activities, including inspection practices;

(5) technical information related to building construction, fire properties of materials, and similar information;

(6) information on fire prevention and control laws, systems, methods, techniques, and administrative structures used in foreign nations;

(7) information on the causes, behavior, and best method of control of other types of fire, including, but not limited to, forest fires, brush fires, fire underground, oil blow-out fires, and water-borne fires; and

(8) such other information and data as is deemed useful and applicable.

(b) Methods

In carrying out the program of the Data Center, the Administrator is authorized to—

(1) develop standardized data reporting methods;

(2) encourage and assist State, local, and other agencies, public and private, in developing and reporting information; and

(3) make full use of existing data gathering and analysis organizations, both public and private.

(c) Dissemination of fire data

The Administrator shall insure dissemination to the maximum extent possible of fire data collected and developed by the Data Center, and shall make such data, information, and analysis available in appropriate form to Federal agencies, State and local governments, private organizations, industry, business, and other interested persons.

(Pub. L. 93-498, § 9, Oct. 29, 1974, 88 Stat. 1541.)

§ 2209. Master plans

(a) Encouragement by Administrator

The establishment of master plans for fire prevention and control are the responsibility of the States and the political subdivisions thereof. The Administrator is authorized to encourage and assist such States and political subdivisions in such planning activities, consistent with his powers and duties under this chapter.

(b) Report to Congress

Four years after October 29, 1974, the Secretary shall submit to the Congress a report on the establishment and effectiveness of master plans in the field of fire prevention and control throughout the Nation. Such report shall include, but need not be limited to—

(1) a summary of the extent and quality of master planning activities;

(2) a summary and evaluation of master plans that have been prepared by States and political subdivisions thereof. Such summary and evaluation shall consider, with respect to each such plan (A) the characteristics of the jurisdiction adopting it, including, but not limited to, density and distribution of population; ratio of volunteer versus paid fire services; geographic location, topography, and climate; per capital rate of death and property loss from fire; size and characteristics of political subdivisions of the governmental units thereof; and socio-economic composition; and (B) the approach to development and implementation of the master plans;

(3) an evaluation of the best approach to the development and implementation of master plans (e.g., central planning by a State agency, regionalized planning within a State coordinated by a State agency, or local planning supplemented and coordinated by a State agency);

(4) an assessment of the costs and benefits of master plans;

(5) a recommendation to Congress on whether Federal financial assistance should be authorized in order that master plans can be developed in all States; and

(6) a model master plan or plans suitable for State and local implementation.

(c) Definition

For the purposes of this section, a "master plan" is one which will result in the planning and implementation in the area involved of a general program of action for fire prevention and control. Such master plan is reasonably expected to include (1) a survey of the resources and personnel of existing fire services and an analysis of the effectiveness of the fire and building codes in such area; (2) an analysis of short and long term fire prevention and control needs in such area; (3) a plan to meet the fire prevention and control needs in such area; and (4) an estimate of cost and realistic plans for financing the implementation of the plan and operation on a continuing basis and a summary of problems that are anticipated in implementing such master plan.

(Pub. L. 93-498, § 10, Oct. 29, 1974, 88 Stat. 1542.)

§ 2210. Reimbursement for costs of firefighting on federal property

(a) Filing of claims

Each fire service that engages in the fighting of a fire on property which is under the jurisdiction of the United States may file a claim with the Administrator for the amount of direct expenses and direct losses incurred by such fire service as a result of fighting such fire. The claim shall include such supporting information as the Administrator may prescribe.

(b) Determination

Upon receipt of a claim filed under subsection (a) of this section, the Administrator shall determine—

(1) what payments, if any, to the fire service or its parent jurisdiction, including taxes or payments in lieu of taxes, the United States has made for the support of fire services on the property in question;

(2) the extent to which the fire service incurred additional firefighting costs, over and above its normal operating costs, in connection with the fire which is the subject of the claim; and

(3) the amount, if any, of the additional costs referred to in paragraph (2) of this subsection which were not adequately covered by the payments referred to in paragraph (1) of this subsection.

(c) Payment

The Secretary shall forward the claim and a copy of the Administrator's determination under subsection (b)(3) of this section to the Secretary of the Treasury. The Secretary of the Treasury shall, upon receipt of the claim and determination, pay such fire service or its parent jurisdiction, from any moneys in the Treasury not otherwise appropriated but subject to reimbursement (from any appropriations which may be available or which may be made available for the purpose) by the Federal department or agency under whose jurisdiction the fire occurred, a sum no greater than the amount determined with respect to the claim under subsection (b)(3) of this section.

(d) Adjudication

In the case of a dispute arising in connection with a claim under this section, the Court of Claims of the United States shall have jurisdiction to adjudicate the claim and enter judgment accordingly.

(Pub. L. 93-498, § 11, Oct. 29, 1974, 88 Stat. 1543.)

Section Referred to in Other Sections

This section is referred to in section 2216 of this title.

§ 2211. Review of fire prevention codes

The Administrator is authorized to review, evaluate, and suggest improvements in State and local fire prevention codes, building codes, and any relevant Federal or private codes and regulations. In evaluating any such code or codes, the Administrator shall consider the human impact of all code requirements, standards, or provisions in terms of comfort and habitability for residents or employees, as well as the fire prevention and control value or potential of each such requirement, standard, or provision.

(Pub. L. 93-498, § 12, Oct. 29, 1974, 88 Stat. 1543.)

§ 2212. Fire safety effectiveness statements

The Administrator is authorized to encourage owners and managers of residential multiple-unit, commercial, industrial, and transportation structures to prepare Fire Safety Effectiveness Statements, pursuant to standards, forms, rules, and regulations to be developed and issued by the Administrator.

(Pub. L. 93-498, § 13, Oct. 29, 1974, 88 Stat. 1544.)

§ 2213. Annual conference

The Administrator is authorized to organize, or to participate in organizing, an annual conference on fire prevention and control. He may pay, in whole or in part, the cost of such conference and the expenses of some or all of the participants. All of the Nation's fire services shall be eligible to send representatives to each such conference to discuss, exchange ideas on, and participate in educational programs on new techniques in fire prevention and control. Such conferences shall be open to the public.

(Pub. L. 93-498, § 14, Oct. 29, 1974, 88 Stat. 1544.)

§ 2214. Public safety awards

(a) Establishment

There are hereby established two classes of honorary awards for the recognition of outstanding and distinguished service by public safety officers—

(1) the President's Award For Outstanding Public Safety Service ("President's Award"); and

(2) the Secretary's Award For Distinguished Public Safety Service ("Secretary's Award").

(b) Description

(1) The President's Award shall be presented by the President of the United States to public safety officers for extraordinary valor in the line of duty or for outstanding contribution to public safety.

(2) The Secretary's Award shall be presented by the Secretary, the Secretary of Defense, or by the Attorney General to public safety officers for distinguished service in the field of public safety.

(c) Selection

The Secretary, the Secretary of Defense, and the Attorney General shall advise and assist the President in the selection of individuals to whom the President's Award shall be tendered and in the course of performing such duties they shall seek and review nominations for such awards which are submitted to them by Federal, State, county, and local government officials. They shall annually transmit to the President the names of those individuals determined by them to merit the award, together with the reasons therefor. Recipients of the President's Award shall be selected by the President.

(d) Limitation on number of awards

(1) There shall not be presented in any one calendar year in excess of twelve President's Awards.

(2) There shall be no limitation on the number of Secretary's Awards presented.

(e) Award

(1) Each President's Award shall consist of—

(A) a medal suitably inscribed, bearing such devices and emblems, and struck from such material as the Secretary of the Treasury, after consultation with the Secretary, the Secretary of Defense, and the Attorney General deems appropriate. The Secretary of the Treasury shall cause the medal to be struck and furnished to the President; and

(B) an appropriate citation.

(2) Each Secretary's Award shall consist of an appropriate citation.

(f) Regulations

The Secretary, the Secretary of Defense, and the Attorney General are authorized and directed to issue jointly such regulations as may be necessary to carry out this section.

(g) Definitions

As used in this section, the term "public safety officer" means a person serving a public agency, with or without compensation, as—

(1) a firefighter;

(2) a law enforcement officer, including a corrections or court officer; or

(3) a civil defense officer.

(Pub. L. 93-498, § 15, Oct. 29, 1974, 88 Stat. 1544.)

§ 2215. Reports to Congress and President

The Secretary shall report to the Congress and the President not later than June 30 of the year following October 29, 1974, and each year thereafter on all activities relating to fire prevention and control, and all measures taken to implement and carry out this chapter during the preceding calendar year. Such report shall include, but need not be limited to—

(a) a thorough appraisal, including statistical analysis, estimates, and long-term projections of the human and economic losses due to fire;

(b) a survey and summary, in such detail as is deemed advisable, of the research and technology program undertaken or sponsored pursuant to this chapter;

(c) a summary of the activities of the Academy for the preceding 12 months, including, but not limited to—

(1) an explanation of the curriculum of study;

(2) a description of the standards of admission and performance;

(3) the criteria for the awarding of degrees and certificates; and

(4) a statistical compilation of the number of students attending the Academy and receiving degrees or certificates;

(d) a summary of the activities undertaken to assist the Nation's fire services;

(e) a summary of the public education programs undertaken;

(f) an analysis of the extent of participation in preparing and submitting Fire Safety Effectiveness Statements;

(g) a summary of outstanding problems confronting the administration of this chapter, in order of priority;

(h) such recommendations for additional legislation as are deemed necessary or appropriate; and

(i) a summary of reviews, evaluations, and suggested improvements in State and local fire prevention and building codes, fire services, and any relevant Federal or private codes, regulations, and fire services.

(Pub. L. 93-498, § 16, Oct. 29, 1974, 88 Stat. 1545.)

§ 2216. Authorization of appropriations

There are authorized to be appropriated to carry out the foregoing provisions of this chapter, except section 2210 of this title, not to exceed $3,750,000 for the transitional fiscal quarter of July 1, 1976, through September 30, 1976, not to exceed $15,000,000 for the fiscal year ending September 30, 1977, and not to exceed $20,000,000 for the fiscal year ending September 30, 1978.

(Pub. L. 93-498, § 17, Oct. 29, 1974, 88 Stat. 1545; Pub. L. 94-411 § 1(a), Sept. 13, 1976, 90 Stat. 1254.)

AMENDMENTS

1976—Pub. L. 94-411 substituted provisions authorizing to be appropriated not to exceed $3,750,000 for the transitional fiscal quarter of July 1, 1976, through Sept. 30, 1976, not to exceed $15,000,000 for the fiscal year ending Sept. 30, 1977, and not to exceed $20,000,000 for the fiscal year ending Sept. 30, 1978, for provisions authorizing to be appropriated such sums as are necessary, not to exceed $10,000,000 for the fiscal year ending June 30, 1975, and not to exceed $15,000,000 for the fiscal year ending June 30, 1976.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2206 of this title.

§ 2217. Public access to information

Copies of any document, report, statement, or information received or sent by the Secretary or the Administrator shall be made available to the public pursuant to the provisions of section

552 of title 5: *Provided*, That, notwithstanding the provisions of subsection (b) of such section and of section 1905 of title 18, the Secretary may disclose information which concerns or relates to a trade secret—

(1) upon request, to other Federal Government departments and agencies for official use;

(2) upon request, to any committee of Congress having jurisdiction over the subject matter to which the information relates;

(3) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceedings; and

(4) to the public when he determines such disclosure to be necessary in order to protect health and safety after notice and opportunity for comment in writing or for discussion in closed session within fifteen days by the party to which the information pertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to health and safety).

(Pub. L. 93-498, § 20, Oct. 29, 1974, 88 Stat. 1547.)

§ 2218. Administrative provisions

(a) Assistance to Administrator

Each department, agency, and instrumentality of the executive branch of the Federal Government and each independent regulatory agency of the United States is authorized and directed to furnish to the Administrator, upon written request, on a reimbursable basis or otherwise, such assistance as the Administrator deems necessary to carry out his functions and duties pursuant to this chapter, including, but not limited to, transfer of personnel with their consent and without prejudice to their position and ratings.

(b) Powers of Administrator

With respect to this chapter, the Administrator is authorized to—

(1) enter into, without regard to section 5 of title 41, such contracts, grants, leases, cooperative agreements, or other transactions as may be necessary to carry out the provisions of this chapter;

(2) accept gifts and voluntary and uncompensated services, notwithstanding the provisions of section 665(b) of title 31;

(3) purchase, lease, or otherwise acquire, own, hold, improve, use, or deal in and with any property (real, personal, or mixed, tangible or intangible), or interest in property, wherever situated; and sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of property and assets;

(4) procure temporary and intermittent services to the same extent as is authorized under section 3109 of title 5, but at rates not to exceed $100 a day for qualified experts; and

(5) establish such rules, regulations, and procedures as are necessary to carry out the provisions of this chapter.

(c) Audit

The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the recipients of contracts, grants, or other forms of assistance that are pertinent to its activities under this chapter for the purpose of audit or to determine if a proposed activity is in the public interest.

(d) Inventions and discoveries

All property rights with respect to inventions and discoveries, which are made in the course of or under contract with any government agency pursuant to this chapter, shall be subject to the basic policies set forth in the President's Statement of Government Patent Policy issued August 23, 1971, or such revisions of that statement of the policy as may subsequently be promulgated and published in the Federal Register.

(e) Coordination

To the extent practicable, the Administrator shall utilize existing programs, data, information, and facilities already available in other Federal Government departments and agencies and, where appropriate, existing research organizations, centers, and universities. The Administrator shall provide liaison at an appropriate organizational level to assure coordination of his activities with State and local government agencies, departments, bureaus, or offices concerned with any matter related to programs of fire prevention and control and with private and other Federal organizations and offices so concerned.

(Pub. L. 93-498, § 21, Oct. 29, 1974, 88 Stat. 1548.)

§ 2219. Assistance to Consumer Product Safety Commission

Upon request, the Administrator shall assist the Consumer Product Safety Commission in the development of fire safety standards or codes for consumer products, as defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.).

(Pub. L. 93-498, § 22, Oct. 29, 1974, 88 Stat. 1549.)

References in Text

The Consumer Product Safety Act, referred to in text, is Pub. L. 92-573, Oct. 27, 1972, 86 Stat. 1207, which is classified generally to chapter 47 (§ 2051 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of this title and Tables volume.

CHAPTER 50—CONSUMER PRODUCT WARRANTIES

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§ 2301. Definitions

For the purposes of this chapter:

(1) The term "consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(2) The term "Commission" means the Federal Trade Commission.

(3) The term "consumer" means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product, and any other person who is entitled by the terms of such warranty (or service contract) or under applicable State law to enforce against the warrantor (or service contractor) the obligations of the warranty (or service contract).

(4) The term "supplier" means any person engaged in the business of making a consumer product directly or indirectly available to consumers.

(5) The term "warrantor" means any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty.

(6) The term "written warranty" means—

(A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(B) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking,

which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(7) The term "implied warranty" means an implied warranty arising under State law (as modified by sections 2308 and 2304(a) of this title) in connection with the sale by a supplier of a consumer product.

(8) The term "service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair (or both) of a consumer product.

(9) The term "reasonable and necessary maintenance" consists of those operations (A) which the consumer reasonably can be expected to perform or have performed and (B) which are necessary to keep any consumer

product performing its intended function and operating at a reasonable level of performance.

(10) The term "remedy" means whichever of the following actions the warrantor elects:

(A) repair,

(B) replacement, or

(C) refund;

except that the warrantor may not elect refund unless (i) the warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or (ii) the consumer is willing to accept such refund.

(11) The term "replacement" means furnishing a new consumer product which is identical or reasonably equivalent to the warranted consumer product.

(12) The term "refund" means refunding the actual purchase price (less reasonable depreciation based on actual use where permitted by rules of the Commission).

(13) The term "distributed in commerce" means sold in commerce, introduced or delivered for introduction into commerce, or held for sale or distribution after introduction into commerce.

(14) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(15) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, or American Samoa. The term "State law" includes a law of the United States applicable only to the District of Columbia or only to a territory or possession of the United States; and the term "Federal law" excludes any State law.

(Pub. L. 93-637, title I, § 101, Jan. 4, 1975, 88 Stat. 2183.)

SHORT TITLE

Section 1 of Pub. L. 93-637 provided: "That this act [which enacted this chapter and sections 57a to 57c of this title, amended sections 45, 46, 49, 50, 52, 56 and 58 of this title, and enacted provisions set out as notes under sections 45, 56, 57a and 57b of this title] may be cited as the 'Magnuson-Moss Warranty—Federal Trade Commission Improvement Act'."

§ 2302. Rules governing contents of warranties

(a) Full and conspicuous disclosure of terms and conditions; additional requirements for contents

In order to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products, any warrantor warranting a consumer product to a consumer by means of a written warranty shall, to the extent required by rules of the Commission, fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty. Such rules may require inclusion in the written warranty of any of the following items among others:

(1) The clear identification of the names and addresses of the warrantors.

(2) The identity of the party or parties to whom the warranty is extended.

(3) The products or parts covered.

(4) A statement of what the warrantor will do in the event of a defect, malfunction, or failure to conform with such written warranty—at whose expense—and for what period of time.

(5) A statement of what the consumer must do and expenses he must bear.

(6) Exceptions and exclusions from the terms of the warranty.

(7) The step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty, including the identification of any person or class of persons authorized to perform the obligations set forth in the warranty.

(8) Information respecting the availability of any informal dispute settlement procedure offered by the warrantor and a recital, where the warranty so provides, that the purchaser may be required to resort to such procedure before pursuing any legal remedies in the courts.

(9) A brief, general description of the legal remedies available to the consumer.

(10) The time at which the warrantor will perform any obligations under the warranty.

(11) The period of time within which, after notice of a defect, malfunction, or failure to conform with the warranty, the warrantor will perform any obligations under the warranty.

(12) The characteristics or properties of the products, or parts thereof, that are not covered by the warranty.

(13) The elements of the warranty in words or phrases which would not mislead a reasonable, average consumer as to the nature or scope of the warranty.

(b) Availability of terms to consumer; manner and form for presentation and display of information; duration; extension of period for written warranty or service contract

(1)(A) The Commission shall prescribe rules requiring that the terms of any written warranty on a consumer product be made available to the consumer (or prospective consumer) prior to the sale of the product to him.

(B) The Commission may prescribe rules for determining the manner and form in which information with respect to any written warranty of a consumer product shall be clearly and conspicuously presented or displayed so as not to mislead the reasonable, average consumer, when such information is contained in advertising, labeling, point-of-sale material, or other representations in writing.

(2) Nothing in this chapter (other than paragraph (3) of this subsection) shall be deemed to authorize the Commission to prescribe the duration of written warranties given or to require that a consumer product or any of its components be warranted.

(3) The Commission may prescribe rules for extending the period of time a written warranty or service contract is in effect to correspond with any period of time in excess of a reasonable period (not less than 10 days) during which the consumer is deprived of the use of such consumer product by reason of failure of

the product to conform with the written warranty or by reason of the failure of the warrantor (or service contractor) to carry out such warranty (or service contract) within the period specified in the warranty (or service contract).

(c) Prohibition on conditions for written or implied warranty; waiver by Commission

No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the Commission if—

(1) the warrantor satisfies the Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and

(2) the Commission finds that such a waiver is in the public interest.

The Commission shall identify in the Federal Register, and permit public comment on, all applications for waiver of the prohibition of this subsection, and shall publish in the Federal Register its disposition of any such application, including the reasons therefor.

(d) Incorporation by reference of detailed substantive warranty provisions

The Commission may by rule devise detailed substantive warranty provisions which warrantors may incorporate by reference in their warranties.

(e) Applicability to consumer products costing more than $5.00

The provisions of this section apply only to warranties which pertain to consumer products actually costing the consumer more than $5.

(Pub. L. 93-637, title I, § 102, Jan. 4, 1975, 88 Stat. 2185.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2303, 2304, 2311, 2312 of this title.

§ 2303. Designation of written warranties

(a) Full (statement of duration) or limited warranty

Any warrantor warranting a consumer product by means of a written warranty shall clearly and conspicuously designate such warranty in the following manner, unless exempted from doing so by the Commission pursuant to subsection (c) of this section:

(1) If the written warranty meets the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a "full (statement of duration) warranty".

(2) If the written warranty does not meet the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a "limited warranty".

(b) Applicability of requirements, standards, etc., to representations or statements of customer satisfaction

This section and sections 2302 and 2304 of this title shall not apply to statements or representations which are similar to expressions of general policy concerning customer satisfaction and which are not subject to any specific limitations.

(c) Exemptions by Commission

In addition to exercising the authority pertaining to disclosure granted in section 2302 of this title, the Commission may by rule determine when a written warranty does not have to be designated either "full (statement of duration)" or "limited" in accordance with this section.

(d) Applicability to consumer products costing more than $10.00 and not designated as full warranties

The provisions of subsections (a) and (c) of this section apply only to warranties which pertain to consumer products actually costing the consumer more than $10 and which are not designated "full (statement of duration) warranties".

(Pub. L. 93-637, title I, § 103, Jan. 4, 1975, 88 Stat. 2187.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2311 of this title.

§ 2304. Federal minimum standards for warranties

(a) Remedies under written warranty; duration of implied warranty; exclusion or limitation on consequential damages for breach of written or implied warranty; election of refund or replacement

In order for a warrantor warranting a consumer product by means of a written warranty to meet the Federal minimum standards for warranty—

(1) such warrantor must as a minimum remedy such consumer product within a reasonable time and without charge, in the case of a defect, malfunction, or failure to conform with such written warranty;

(2) notwithstanding section 2308(b) of this title, such warrantor may not impose any limitation on the duration of any implied warranty on the product;

(3) such warrantor may not exclude or limit consequential damages for breach of any written or implied warranty on such product, unless such exclusion or limitation conspicuously appears on the face of the warranty; and

(4) if the product (or a component part thereof) contains a defect or malfunction after a reasonable number of attempts by the warrantor to remedy defects or malfunctions in such product, such warrantor must permit the consumer to elect either a refund for, or replacement without charge of, such product or part (as the case may be). The Commission may by rule specify for purposes of this paragraph, what constitutes a reasonable number of attempts to remedy particular kinds of defects or malfunctions under different circumstances. If the warrantor replaces a component part of a consumer product, such re-

placement shall include installing the part in the product without charge.

(b) Duties and conditions imposed on consumer by warrantor

(1) In fulfilling the duties under subsection (a) of this section respecting a written warranty, the warrantor shall not impose any duty other than notification upon any consumer as a condition of securing remedy of any consumer product which malfunctions, is defective, or does not conform to the written warranty, unless the warrantor has demonstrated in a rulemaking proceeding, or can demonstrate in an administrative or judicial enforcement proceeding (including private enforcement), or in an informal dispute settlement proceeding, that such a duty is reasonable.

(2) Notwithstanding paragraph (1), a warrantor may require, as a condition to replacement of, or refund for, any consumer product under subsection (a) of this section, that such consumer product shall be made available to the warrantor free and clear of liens and other encumbrances, except as otherwise provided by rule or order of the Commission in cases in which such a requirement would not be practicable.

(3) The Commission may, by rule define in detail the duties set forth in subsection (a) of this section and the applicability of such duties to warrantors of different categories of consumer products with "full (statement of duration)" warranties.

(4) The duties under subsection (a) of this section extend from the warrantor to each person who is a consumer with respect to the consumer product.

(c) Waiver of standards

The performance of the duties under subsection (a) of this section shall not be required of the warrantor if he can show that the defect, malfunction, or failure of any warranted consumer product to conform with a written warranty, was caused by damage (not resulting from defect or malfunction) while in the possession of the consumer, or unreasonable use (including failure to provide reasonable and necessary maintenance).

(d) Remedy without charge

For purposes of this section and of section 2302(c) of this title, the term "without charge" means that the warrantor may not assess the consumer for any costs the warrantor or his representatives incur in connection with the required remedy of a warranted consumer product. An obligation under subsection (a)(1)(A) of this section to remedy without charge does not necessarily require the warrantor to compensate the consumer for incidental expenses; however, if any incidental expenses are incurred because the remedy is not made within a reasonable time or because the warrantor imposed an unreasonable duty upon the consumer as a condition of securing remedy, then the consumer shall be entitled to recover reasonable incidental expenses which are so incurred in any action against the warrantor.

(e) Incorporation of standards to products designated with full warranty for purposes of judicial actions

If a supplier designates a warranty applicable to a consumer product as a "full (statement of duration)" warranty, then the warranty on such product shall, for purposes of any action under section 2310(d) of this title or under any State law, be deemed to incorporate at least the minimum requirements of this section and rules prescribed under this section.

(Pub. L. 93-637, title I, § 104, Jan. 4, 1975, 88 Stat. 2187.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2301, 2303, 2308, 2311 of title.

§ 2305. Full and limited warranting of a consumer product

Nothing in this chapter shall prohibit the selling of a consumer product which has both full and limited warranties if such warranties are clearly and conspicuously differentiated.

(Pub. L. 93-637, title I, § 105, Jan. 4, 1975, 88 Stat. 2188.)

§ 2306. Service contracts; rules for full, clear and conspicuous disclosure of terms and conditions; addition to or in lieu of written warranty

(a) The Commission may prescribe by rule the manner and form in which the terms and conditions of service contracts shall be fully, clearly, and conspicuously disclosed.

(b) Nothing in this chapter shall be construed to prevent a supplier or warrantor from entering into a service contract with the consumer in addition to or in lieu of a written warranty if such contract fully, clearly, and conspicuously discloses its terms and conditions in simple and readily understood language.

(Pub. L. 93-637, title I, § 106, Jan. 4, 1975, 88 Stat. 2188.)

§ 2307. Designation of representatives by warrantor to perform duties under written or implied warranty

Nothing in this chapter shall be construed to prevent any warrantor from designating representatives to perform duties under the written or implied warranty: *Provided,* That such warrantor shall make reasonable arrangements for compensation of such designated representatives, but no such designation shall relieve the warrantor of his direct responsiblities to the consumer or make the representative a cowarrantor.

(Pub. L. 93-637, title I, § 107, Jan. 4, 1975, 88 Stat. 2189.)

§ 2308. Implied warranties

(a) Restrictions on disclaimers or modifications

No supplier may disclaim or modify (except as provided in subsection (b) of this section) any implied warranty to a consumer with respect to such consumer product if (1) such supplier makes any written warranty to the consumer with respect to such consumer product, or (2) at the time of sale, or within 90 days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product.

(b) Limitation on duration

For purposes of this chapter (other than section 2304(a)(2) of this title), implied warranties may be limited in duration to the duration of a written warranty of reasonable duration, if such limitation is conscionable and is set forth in clear and unmistakable language and prominently displayed on the face of the warranty.

(c) Effectiveness of disclaimers, modifications, or limitations

A disclaimer, modification, or limitation made in violation of this section shall be ineffective for purposes of this chapter and State law.

(Pub. L. 93-637, title I, § 108, Jan. 4, 1975, 88 Stat. 2189.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2301, 2304, 2311 of this title.

§ 2309. Procedures applicable to promulgation of rules by Commission; rulemaking proceeding for warranty and warranty practices involved in sale of used motor vehicles

(a) Any rule prescribed under this chapter shall be prescribed in accordance with section 553 of title 5; except that the Commission shall give interested persons an opportunity for oral presentations of data, views, and arguments, in addition to written submissions. A transcript shall be kept of any oral presentation. Any such rule shall be subject to judicial review under section 57a(e) of this title in the same manner as rules prescribed under section 57a(a)(1)(B) of this title, except that section 57a(e)(3)(B) of this title shall not apply.

(b) The Commission shall initiate within one year after the January 4, 1975, a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles; and, to the extent necessary to supplement the protections offered the consumer by this chapter, shall prescribe rules dealing with such warranties and practices. In prescribing rules under this subsection, the Commission may exercise any authority it may have under this chapter, or other law, and in addition it may require disclosure that a used motor vehicle is sold without any warranty and specify the form and content of such disclosure.

(Pub. L. 93-637, title I, § 109, Jan. 4, 1975, 88 Stat. 2189.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2311 of this title.

§ 2310. Remedies in consumer disputes

(a) Informal dispute settlement procedures; establishment; rules setting forth minimum requirements; effect of compliance by warrantor; review of informal procedures or implementation by Commission; application to existing informal procedures

(1) Congress hereby declares it to be its policy to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.

(2) The Commission shall prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of this chapter applies. Such rules shall provide for participation in such procedure by independent or governmental entities.

(3) One or more warrantors may establish an informal dispute settlement procedure which meets the requirements of the Commission's rules under paragraph (2). If—

(A) a warrantor establishes such a procedure,

(B) such procedure, and its implementation, meets the requirements of such rules, and

(C) he incorporates in a written warranty a requirement that the consumer resort to such procedure before pursuing any legal remedy under this section respecting such warranty,

then (i) the consumer may not commence a civil action (other than a class action) under subsection (d) of this section unless he initially resorts to such procedure; and (ii) a class of consumers may not proceed in a class action under subsection (d) of this section except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the named plaintiffs (upon notifying the defendant that they are named plaintiffs in a class action with respect to a warranty obligation) initially resort to such procedure. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure. In any civil action arising out of a warranty obligation and relating to a matter considered in such a procedure, any decision in such procedure shall be admissible in evidence.

(4) The Commission on its own initiative may, or upon written complaint filed by any interested person shall, review the bona fide operation of any dispute settlement procedure resort to which is stated in a written warranty to be a prerequisite to pursuing a legal remedy under this section. If the Commission finds that such procedure or its implementation fails to comply with the requirements of the rules under paragraph (2), the Commission may take appropriate remedial action under any authority it may have under this chapter or any other provision of law.

(5) Until rules under paragraph (2) take effect, this subsection shall not affect the validity of any informal dispute settlement procedure respecting consumer warranties, but in any action under subsection (d) of this section, the court may invalidate any such procedure if it finds that such procedure is unfair.

(b) Prohibited acts

It shall be a violation of section 45(a)(1) of this title for any person to fail to comply with any requirement imposed on such person by this chapter (or a rule thereunder) or to violate any prohibition contained in this chapter (or a rule thereunder).

(c) Injunction proceedings by Attorney General or Commission for deceptive warranty, noncompliance with requirements, or violating prohibitions; procedures; definitions

(1) The district courts of the United States shall have jurisdiction of any action brought by the Attorney General (in his capacity as such), or by the Commission by any of its attorneys designated by it for such purpose, to restrain (A) any warrantor from making a deceptive warranty with respect to a consumer product, or (B) any person from failing to comply with any requirement imposed on such person by or pursuant to this chapter or from violating any prohibition contained in this chapter. Upon proper showing that, weighing the equities and considering the Commission's or Attorney General's likelihood of ultimate success, such action would be in the public interest and after notice to the defendant, a temporary restraining order or preliminary injunction may be granted without bond. In the case of an action brought by the Commission, if a complaint under section 45 of this title is not filed within such period (not exceeding 10 days) as may be specified by the court after the issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect. Any suit shall be brought in the district in which such person resides or transacts business. Whenever it appears to the court that the ends of justice require that other persons should be parties in the action, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and to that end process may be served in any district.

(2) For the purposes of this subsection, the term "deceptive warranty" means (A) a written warranty which (i) contains an affirmation, promise, description, or representation which is either false or fraudulent, or which, in light of all of the circumstances, would mislead a reasonable individual exercising due care; or (ii) fails to contain information which is necessary in light of all of the circumstances, to make the warranty not misleading to a reasonable individual exercising due care; or (B) a written warranty created by the use of such terms as "guaranty" or "warranty", if the terms and conditions of such warranty so limit its scope and application as to deceive a reasonable individual.

(d) Civil action by consumer for damages, etc.; jurisdiction; recovery of costs and expenses; cognizable claims

(1) Subject to subsections (a)(3) and (e) of this section, a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief—

(A) in any court of competent jurisdiction in any State or the District of Columbia; or

(B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection.

(2) If a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

(3) No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection—

(A) if the amount in controversy of any individual claim is less than the sum or value of $25;

(B) if the amount in controversy is less than the sum or value of $50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; or

(C) if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.

(e) Class actions; conditions; procedures applicable

No action (other than a class action or an action respecting a warranty to which subsection (a)(3) of this section applies) may be brought under subsection (d) of this section for failure to comply with any obligation under any written or implied warranty or service contract, and a class of consumers may not proceed in a class action under such subsection with respect to such a failure except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the person obligated under the warranty or service contract is afforded a reasonable opportunity to cure such failure to comply. In the case of such a class action (other than a class action respecting a warranty to which subsection (a)(3) of this section applies) brought under subsection (d) of this section for breach of any written or implied warranty or service contract, such reasonable opportunity will be afforded by the named plaintiffs and they shall at that time notify the defendant that they are acting on behalf of the class. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure.

(f) Warrantors subject to enforcement of remedies

For purposes of this section, only the warrantor actually making a written affirmation of fact, promise, or undertaking shall be deemed to have created a written warranty, and any rights arising thereunder may be enforced under this section only against such warrantor and no other person.

(Pub. L. 93-637, title I, § 110, Jan. 4, 1975, 88 Stat. 2189.)

REFERENCES IN TEXT

Rule 23 of the Federal Rules of Civil Procedure, referred to in subsecs. (a)(3) and (e), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2304 of this title.

§ 2311. Applicability to other laws

(a) Federal Trade Commission Act and Federal Seed Act

(1) Nothing contained in this chapter shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act [15 U.S.C. 41 et seq.] or any statute defined therein as an Antitrust Act.

(2) Nothing in this chapter shall be construed to repeal, invalidate, or supersede the Federal Seed Act [7 U.S.C. 1551 et seq.] and nothing in this chapter shall apply to seed for planting.

(b) Rights, remedies, and liabilities

(1) Nothing in this chapter shall invalidate or restrict any right or remedy of any consumer under State law or any other Federal law.

(2) Nothing in this chapter (other than sections 2308 and 2304(a)(2) and (4) of this title) shall (A) affect the liability of, or impose liability on, any person for personal injury, or (B) supersede any provision of State law regarding consequential damages for injury to the person or other injury.

(c) State warranty laws

(1) Except as provided in subsection (b) of this section and in paragraph (2) of this subsection, a State requirement—

(A) which relates to labeling or disclosure with respect to written warranties or performance thereunder;

(B) which is within the scope of an applicable requirement of sections 2302, 2303, and 2304 of this title (and rules implementing such sections), and

(C) which is not identical to a requirement of section 2302, 2303, or 2304 of this title (or a rule thereunder),

shall not be applicable to written warranties complying with such sections (or rules thereunder).

(2) If, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with section 2309 of this title) that any requirement of such State covering any transaction to which this chapter applies (A) affords protection to consumers greater than the requirements of this chapter and (B) does not unduly burden interstate commerce, then such State requirement shall be applicable (notwithstanding the provisions of paragraph (1) of this subsection) to the extent specified in such determination for so long as the State administers and enforces effectively any such greater requirement.

(d) Other Federal warranty laws

This chapter (other than section 2302(c) of this title) shall be inapplicable to any written warranty the making or content of which is otherwise governed by Federal law. If only a portion of a written warranty is so governed by Federal law, the remaining portion shall be subject to this chapter.

(Pub. L. 93-637, title I, § 111, Jan. 4, 1975, 88 Stat. 2192.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a)(1), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables volume.

The Antitrust Acts, referred to in subsec. (a)(1), are defined in section 44 of this title.

The Federal Seed Act, referred to in subsec. (a)(2), is act Aug. 9, 1939, ch. 615, 53 Stat. 1275, which is classified generally to chapter 37 (§ 1551 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1551 of Title 7 and Tables volume.

§ 2312. Effective dates

(a) Effective date of chapter

Except as provided in subsection (b) of this section, this chapter shall take effect 6 months after January 4, 1975, but shall not apply to consumer products manufactured prior to such date.

(b) Effective date of section 2302(a)

Section 2302(a) of this title shall take effect 6 months after the final publication of rules respecting such section; except that the Commission, for good cause shown, may postpone the applicability of such sections until one year after such final publication in order to permit any designated classes of suppliers to bring their written warranties into compliance with rules promulgated pursuant to this chapter.

(c) Promulgation of rules

The Commission shall promulgate rules for initial implementation of this chapter as soon as possible after January 4, 1975, but in no event later than one year after such date.

(Pub. L. 93-637, title I, § 112, Jan. 4, 1975, 88 Stat. 2192.)

CHAPTER 51—NATIONAL PRODUCTIVITY AND QUALITY OF WORKING LIFE

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SUBCHAPTER I—FINDINGS, PURPOSE, AND POLICY; DEFINITIONS

§ 2401. Congressional findings

The Congress finds that—

(1) the rate of productivity growth in the United States has declined during four of the past six years;

(2) the decline in the rate of productivity growth has contributed to inflation, to economic stagnation, and to increasing unemployment;

(3) since 1965, the rate of productivity growth of the United States has been consistently lower than that of many industrial nations in the world, adversely affecting the competitive position of the United States in world markets;

(4) growth in productivity of the economy of the United States is essential to the social and economic welfare of the American people, and to the health of the world economy;

(5) growth in the productivity of the Nation's economy is essential to maintain and increase employment, to stabilize the cost of living and to provide job security;

(6) mounting worldwide material shortages and their consequent inflationary results make increased efficiency in the utilization of these resources of urgent importance;

(7) sharing the fruits of productivity gains among labor, management, and owners may considerably influence productivity;

(8) the continued development of joint labor-management efforts to provide a healthy environment for collective bargaining can make a significant contribution to improve productivity and foster industrial peace;

(9) factors affecting the growth of productivity in the economy include not only the status of technology and the techniques of management but also the role of the worker in the production process and the conditions of his working life;

(10) there is a national need to identify and encourage appropriate application of capital in sectors of American economic activity in order to improve productivity;

(11) there is a national need to identify and encourage appropriate application of technology in all sectors of American economic activity in order to improve productivity;

(12) there is a national need to identify and encourage the development of social, economic, scientific, business, labor, and governmental contributions to improve productivity growth, and increased economic effectiveness in the public and private sectors of the United States; which objectives can best be accomplished through maximizing private sector and State and local development of such contributions;

(13) there is a national need to identify, study, and revise or eliminate the laws, regulations, policies, and procedures which adversely affect productivity growth and the efficient functioning of the economy;

(14) there is a national need to increase employment security through such activities as manpower planning, skill-training and retraining of workers, internal work force adjustments to avoid worker displacement, assistance to workers facing or experiencing displacement, and all other public and private programs which seek to minimize the human costs of productivity improvement, thereby diminishing resistance to workplace change and improving productivity growth;

(15) there is a national need to develop new technologies for the more effective production of goods and services;

(16) there is a national need to encourage and support efforts by qualified institutions of higher learning to identify and inaugurate programs which will improve productivity;

(17) there is a national need to develop precise, standardized measurements of productivity; and

(18) there is a national need to gather and disseminate information about methods and techniques to improve productivity.

(Pub. L. 94-136, title I, § 101, Nov. 28, 1975, 89 Stat. 733.)

SHORT TITLE

Section 1 of Pub. L. 94-136 provided: "That this Act [enacting this chapter, repealing section 1026 of this title, and enacting provisions set out as notes under this section] may be cited as the 'National Productivity And Quality of Working Life Act of 1975'."

TRANSFER OF FUNCTIONS AND STAFF OF NATIONAL COMMISSION ON PRODUCTIVITY AND WORK QUALITY

Section 602 of Pub. L. 94-136 provided that:

"(a) The functions and staff of the National Commission on Productivity and Work Quality are hereby transferred to the Center.

"(b) All property, records, and contracts as are determined by the Director of the Office of Management and Budget to be employed, held, or used primarily in connection with any function transferred by subsection (a) are transferred to the Center."

§ 2402. Congressional statement of purpose

It is the purpose of this chapter—

(1) to establish a national policy which will encourage productivity growth consistent with needs of the economy, the natural environment, and the needs, rights, and best interests of management, the work force, and consumers; and

(2) to establish as an independent establishment of the executive branch a National Center for Productivity and Quality of Working Life to focus, coordinate, and promote efforts to improve the rate of productivity growth.

(Pub. L. 94-136, title I, § 102, Nov. 28, 1975, 89 Stat. 734.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2461 of this title.

§ 2403. Congressional declaration of policy

(a) Stimulation of high rate of productivity growth

The Congress, recognizing the profound impact of productivity on the interrelations of all components of the national economy, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, to use all practicable means and measures, including financial and technical assistance, to stimulate a high rate of productivity growth.

(b) Improvement and coordination of Federal plans to carry out policy

It is the continuing responsibility of the Federal Government to use all practicable means to improve and coordinate Federal plans, functions, programs, and resources to carry out the policy set forth in this chapter.

(c) Interpretation of laws, rules, etc., to carry out policy

The laws, rules, regulations, and policies of the United States shall be so interpreted as to give full force and effect to this policy.

(Pub. L. 94-136, title I, § 103, Nov. 28, 1975, 89 Stat. 734.)

§ 2404. Definitions

For the purposes of this chapter—

(1) the term "Center" means the National Center for Productivity and Quality of Working Life;

(2) the term "Board" means the Board of Directors of the Center;

(3) the terms "productivity growth" and "improved productivity" shall be interpreted to include, but not be limited to, improvements in technology, management techniques, and the quality of working life; and

(4) the term "quality of working life" shall be interpreted to mean the conditions of work relating to the role of the worker in the production process.

(Pub. L. 94-136, title I, § 104, Nov. 28, 1975, 89 Stat. 735.)

SUBCHAPTER II—NATIONAL CENTER FOR PRODUCTIVITY AND QUALITY OF WORKING LIFE

§ 2411. Establishment

There is hereby established as an independent establishment of the executive branch of the Government the National Center for Productivity and Quality of Working Life.

(Pub. L. 94-136, title II, § 201, Nov. 28, 1975, 89 Stat. 735.)

§ 2412. Board of Directors

(a) Membership

The Center shall have a Board of Directors, to be comprised of not more than twenty-seven members, as follows:

(1) a Chairman, appointed by the President, by and with the advice and consent of the Senate;

(2) the Secretary of the Treasury;

(3) the Secretary of Commerce;

(4) the Secretary of Labor;

(5) the Director of the Federal Mediation and Conciliation Service;

(6) the Executive Director of the Center;

(7) not less than five members who shall be appointed by the President, by and with the advice and consent of the Senate, from among qualified private individuals in manufacturing and service industries;

(8) not less than five members who shall be appointed by the President, by and with the advice and consent of the Senate, from among qualified private individuals from labor organizations;

(9) not less than two members who shall be appointed by the President, by and with the advice and consent of the Senate, from among qualified individuals in State or local governments;

(10) not less than one member who shall be appointed by the President, by and with the advice and consent of the Senate, from among the general public;

(11) not less than one member who shall be appointed by the President, by and with the advice and consent of the Senate, from among qualified individuals associated with leading institutions of higher education; and

(12) such other qualified members from the public or private sectors whom the President may deem appropriate who shall be appointed by the President, by and with the advice and consent of the Senate.

When unable to attend a meeting of the Board, a member appointed under clauses (2), (3), (4), and (5) shall appoint an appropriate alternate from such member's Department or agency to represent such member at that meeting.

(b) Term

(1) The members of the Board appointed under clauses (7), (8), (9), (10), (11), and any private sector members appointed pursuant to clause (12) of subsection (a) of this section shall

be appointed for a four-year term coterminous with the term of the President. Members other than members appointed under such clauses, with the exception of the Chairman, shall serve as long as such member is head of the department or agency represented on the Board. No person shall serve as an acting or temporary member in positions requiring Senate confirmation including that of Chairman, for a period in excess of three months.

(2) The President shall appoint a Chairman for a term of four years coterminous with the term of the President. In appointing a Chairman, the President may appoint an individual who is an officer of the United States. If that officer has been appointed to his current position, by and with the advice and consent of the Senate, or if such individual is the Vice President of the United States, such individual may be appointed chairman by the President without the requirement of confirmation by the Senate.

(c) Vacancies

Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of that term.

(d) Compensation, travel, subsistence, and other expense items

(1) Each member of the Board appointed under clauses (7), (8), (9), (10), (11), and any private sector members appointed pursuant to clause (12) of subsection (a) of this section may be compensated at the daily rate provided for GS-18 of the General Schedule under section 5332 of title 5, including traveltime, for each day such member is engaged in the performance of his duties as a member of the Board and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in carrying out the functions of the Board.

(2) Other members of the Board, with the exception of the Chairman, and the Executive Director of the Center shall serve without additional compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Board.

(3) The Chairman shall be compensated as set forth in paragraph (1) of this subsection, except if the Chairman holds some other position in the Federal Government such individual shall be compensated as set forth in paragraph (2) of this subsection.

(e) Executive Committee of the Board

(1) The Chairman shall appoint an Executive Committee of the Board, not to exceed seven members, including the Executive Director of the Center.

(2) The Executive Committee of the Board shall meet at the call of the Chairman, but in no case less frequently than once every ninety days.

(Pub. L. 94-136, title II, § 202, Nov. 28, 1975, 89 Stat. 735.)

§ 2413. Executive Director and Deputy Director

(a) Appointment of Executive Director; term of temporary Executive Director

The Center shall have an Executive Director, who shall be appointed by the President by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of fitness to perform the duties and functions of the office. No person shall serve as acting or temporary Executive Director for a period in excess of three months.

(b) Appointment of Deputy Director; functions

The Executive Director shall appoint a Deputy Director, who shall perform such functions as the Executive Director may prescribe. The Deputy Director shall act for and exercise the powers of the Executive Director during the absence of disability of the Executive Director.

(c) Powers and duties of Executive Director

The Executive Director shall be responsible for the exercise of all powers and the discharge of all duties of the Center. The Executive Director shall have authority over and control of all of the staff of the Center and their activities. The Executive Director shall maintain budgets and allocate available funds as appropriate in carrying out the provisions of this chapter.

(d) Compensation of Executive Director; dual employment

The Executive Director shall be compensated at a rate not to exceed that provided for Executive level IV under section 5315 of title 5 as determined by the President, and shall have no other employment, public or private, during the tenure of his appointment.

(Pub. L. 94-136, title II, § 203, Nov. 28, 1975, 89 Stat. 736.)

§ 2414. Functions of the Center

The Center shall—

(1) develop and establish, in consultation with the appropriate committees of the Congress and with the appropriate departments and agencies of the executive branch, a national policy for productivity growth in the public and private sectors of the United States consistent with the purposes of this chapter;

(2) seek, stimulate, and encourage maximum active participation of—

(A) the private sector of the Nation's economy, including labor organizations, associations and confederations, business enterprises and associations, institutions of higher education, foundations and other philanthropic organizations and research centers and institutes; and

(B) the public sector of the Nation's economy, including Federal, State, and local governments and agencies thereof, including institutions of higher education,

in efforts to improve the rate of productivity growth in all sectors of the Nation's economy;

(3) seek, stimulate, and encourage maximum active participation of the public agencies and private organizations identified in clause (2) of this section through identifica-

tion and encouragement of selected research and demonstration programs implemented by public agencies and qualified private organizations which will—

(A) increase the rate of productivity growth in the public and private sectors of the national economy through improved and innovative utilization of technological and human resources; and

(B) develop, refine, and apply accurate and reliable measurement techniques to evaluate changes in productivity;

(4) to identify, study, and review—

(A) existing Federal, State, and local statutes, regulations, and fiscal policies which adversely affect productivity growth or the economic performance of the public and private sectors of the United States;

(B) incentives to encourage industry and labor initiatives in the development of methods, techniques, and systems for the improved utilization of technological and human resources in the public and private sectors;

(C) existing and new programs, plans, and other methods, including advanced warning systems, retraining programs, retirement and separation programs, designed to counteract threats to job security which may result from efforts to improve productivity;

(D) jointly, with the Civil Service Commission, the impact of Federal personnel policies, statutes, and regulations affecting the productivity of Federal agencies and the quality of working life of Federal employees; and

(E) the need and feasibility of providing, directly to potential users, public or private, various Center services in return for payment to the Center, and methods by which charges for such services will be established;

(5) recommend to the President, the Congress, the appropriate agencies and departments of the Federal Government, and State and local governments, any legislation, revisions of regulations, policies, practices, and procedures which result from the activities carried out under clause (4) of this section;

(6) encourage, support, and initiate efforts in the public or private sector specifically designed to improve cooperation between labor and management in the achievement of continued productivity growth: *Provided, however,* That no activities of the Center involving consideration of issues included in a specific labor-management agreement shall be undertaken without the consent and cooperation of the parties to that agreement;

(7) encourage departments and agencies of the Federal Government to initiate, stimulate, and support efforts in both the public and private sectors of the United States to improve the rate of productivity growth;

(8) coordinate all activities referred to in subsection (7) of this section in order to eliminate interagency duplication of effort and cost, to insure that Center activities will not unnecessarily conflict or overlap with such other activities, and to maximize the effectiveness of all such Federal programs and activities;

(9) coordinate and consult with the departments and agencies of the Federal Government in the obligation and expenditure of funds for activities and projects in both the public and private sectors to improve productivity growth;

(10) identify, develop, and support activities, programs, systems, and techniques, in the various departments and agencies of the Federal Government for measuring productivity growth within such departments and agencies;

(11) collect and disseminate relevant information obtained by the Center or other public agencies, institutions of higher education, or private organizations engaged in projects under this chapter, including information related to new or improved methods, systems, technological developments, equipment, and devices to improve and stimulate productivity growth, and to develop and implement a public information program designed to inform the public of the meaning and importance of productivity, and productivity growth;

(12) encourage and coordinate the efforts of State and local governments, and institutions of higher education, to improve productivity;

(13) maintain liaison with organizations, both domestic and foreign, involved in efforts to improve productivity;

(14) determine the Nation's needs for productivity-related management and analytical skills and to encourage and facilitate the development of training programs in such skills; and

(15) study the effects of materials availability upon productivity growth.

(Pub. L. 94-136, title II, § 204, Nov. 28, 1975, 89 Stat. 737.)

§ 2415. Powers of the Center

In carrying out its functions, the Center is authorized—

(1) to enter into contracts or other funding arrangements, or modifications thereof, in order to carry out the provisions of this chapter;

(2) to organize and conduct, directly by contract or other funding arrangements with other public agencies or private organizations, conferences, meetings, seminars, workshops, or other forums for the presentation and dissemination of relevant information generated or collected pursuant to the provisions of this chapter;

(3) to make such studies and recommendations to the President and to Congress as may be necessary to carry out the functions of the Center;

(4) to implement a program and secure necessary facilities for the collection, collation, analysis, and interpretation of data and information as required in order to carry out the public information functions under this chapter; and

(5) to undertake such other studies, reviews, activities, and to make such recommendations and reports as may be required to carry out the functions of the Center.

(Pub. L. 94-136, title II, § 205, Nov. 28, 1975, 89 Stat. 739.)

§ 2416. Contracts and other funding arrangements

(a) Qualification of contracts or arrangements

No contracts or other funding arrangements may be entered into under this chapter unless—

(1) such contracts or other funding arrangements will be consistent with the policies and purposes of this chapter and of potential benefit to other users in the public or private sectors;

(2) provisions are made to evaluate the demonstration program and maintain improvement data, such evaluation either to be implemented by the participating parties in accordance with specifications established by the Center, or to be implemented by or on behalf of the Center; and

(3) the participating parties agree that all information relating to any innovation or achievement generated in the course of any Center-funded demonstration program shall be public information.

(b) Duration of contracts or arrangements

No contract or other funding arrangement shall be made or entered into pursuant to the provisions of this chapter for a period of more than three years.

(c) Non-Federal share of project in cash or in kind

Any non-Federal share of a project may be in cash or in kind, fairly evaluated, including, but not limited to, plant, equipment, or services.

(Pub. L. 94-136, title II, § 206, Nov. 28, 1975, 89 Stat. 739.)

§ 2417. Criteria for participating parties

(a) Establishment of criteria by regulation

The Center shall prescribe by regulation, after consultation with appropriate agencies and officials of Federal, State, and local governments, basic criteria for the participating parties under this chapter.

(b) Reallocation of funds

If the Center determines, on the basis of information available to it during any fiscal year, that a portion of the funds provided to a participating party for that fiscal year will not be required by the party or will become available by virtue of the application of regulations established by the Center to govern noncompliance by a participating party, that portion shall be available for reallocation under this section.

(c) Establishment of criteria for determination of noncompliance

The Center shall by regulation prescribe the basic criteria for determination of noncompliance by participating parties including appropriate provisions for notice and hearing with respect to such determination.

(Pub. L. 94-136, title II, § 207, Nov. 28, 1975, 89 Stat. 739.)

FISCAL YEAR TRANSITION PERIOD OF JULY 1, 1976, THROUGH SEPTEMBER 30, 1976, DEEMED PART OF FISCAL YEAR BEGINNING JULY 1, 1975

Fiscal year transition period of July 1, 1976, through Sept. 30, 1976, deemed part of fiscal year beginning July 1, 1975, for purposes of subsec. (b) of this section, see section 204(14) of Pub. L. 94-274, set out as a note under section 390e of Title 7, Agriculture.

§ 2418. Annual report

(a) Not later than December 31 of each year, the Center shall report to the President and to the Congress on activities pursuant to the provision of this subchapter during the preceding fiscal year; such reports shall include a detailed statement of all public and private funds received and expended together with such recommendations as the Center deems appropriate. Such report shall include an analysis of the extent to which each agency of the Federal Government which has significant responsibilities for assisting in the improvement of productivity is carrying out such responsibilities consistent with the provisions of this chapter, including (A) an accounting of all funds expended or obligated by such agencies for activities and projects to improve productivity growth, (B) an assessment of the extent to which such expenditures or obligations have furthered the policies of the Center, and (C) the Center's recommendations on how these expenditures and obligations can be better coordinated to accomplish the purposes of this chapter.

(b) Each report required to be submitted to the Congress by this chapter shall be referred to the standing committee or committees having jurisdiction over any part of the subject matter of the report.

(Pub. L. 94-136, title II, § 208, Nov. 28, 1975, 89 Stat. 740.)

SUBCHAPTER III—FEDERAL AGENCY COORDINATION AND LIAISON WITH CENTER

§ 2431. Liaison with center

(a) Designee

Each department, agency, and independent establishment of the Federal Government shall designate a qualified individual to serve as liaison with the Center and to assist the Center in carrying out its functions pursuant to this chapter.

(b) Consultation with departments, agencies, and independent establishments of Federal Government

Each department, agency, and independent establishment of the Federal Government shall keep the Center currently informed of its programs, policies, and initiatives to improve productivity which relate to the responsibilities of the Center, and shall consult with the Center prior to the obligation or expenditure of funds for activities or projects to improve productivity growth.

(c) Access to information

Each Federal department, agency, and independent establishment of the Federal Government is authorized and directed to furnish or allow access to all relevant materials and information required by the Center to carry out its functions under this chapter.

(Pub. L. 94-136, title III, § 301, Nov. 28, 1975, 89 Stat. 740.)

§ 2432. Internal review

Each department, agency, and independent establishment of the Federal Government, in coordination with the Center, shall study and review the promulgation and implementation of its statutory authority, policies, and regulations, and shall identify such statutes, policies, and regulations which adversely affect productivity growth in the public or private sectors of the United States, or those which impede the efficient functioning of the Nation's economy, and shall recommend to the President and the Congress, or implement where appropriate, alternative statutes, policies, and regulations which will contribute to the achievement of the purposes of this chapter.

(Pub. L. 94-136, title III, § 302, Nov. 28, 1975, 89 Stat. 740.)

§ 2433. Support of external activities

Each department, agency, and independent establishment of the Federal Government, in coordination with the Center, shall, to the extent appropriate, make available to State and local governments, labor organizations, industry, public institutions, and other qualified organizations advice, information, and support, including financial and other assistance, designed to maintain, promote, and enhance sustained productivity growth in the public and private sectors of the United States.

(Pub. L. 94-136, title III, § 303, Nov. 28, 1975, 89 Stat. 741.)

§ 2434. Internal productivity

Each department, agency, and independent establishment of the Federal Government shall identify, develop, initiate, and support appropriate programs, systems, procedures, policies, and techniques to improve the productivity of such departments and agencies, including the implementation, where desirable, of specific programs recommended, supported, or implemented by the Center.

(Pub. L. 94-136, title III, § 304, Nov. 28, 1975, 89 Stat. 741.)

§ 2435. Other statutory obligations

Nothing in this subchapter affects any specific statutory obligation of any Federal agency (1) to coordinate or consult with any other Federal or State agency or (2) to act, or to refrain from acting, contingent upon the recommendations or certification of any other Federal or State agency.

(Pub. L. 94-136, title III, § 305, Nov. 28, 1975, 89 Stat. 741.)

SUBCHAPTER IV—ADMINISTRATIVE PROVISIONS

§ 2451. Authority of Executive Director

The Executive Director is authorized to—

(1) prescribe such regulations as are deemed necessary to carry out the purposes of this chapter;

(2) receive money and other property donated, bequeathed, or devised, or remitted in payment for services rendered, without condition or restriction other than that it be for the purposes of the Center;

(3) receive (and use, sell, or otherwise dispose of, in accordance with clause (2)) money or other property donated, bequeathed, or devised to the Center, except for such money and other property which includes a condition that the Center use other funds of the Center for the purpose of the gift, in which case two-thirds of the members of the Board of the Center must approve such donations;

(4) appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this chapter in accordance with the provisions of title 5, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(5) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, at rates for individuals not to exceed the maximum daily rate prescribed for GS-18 under section 5332 of title 5;

(6) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem as authorized by section 5703 of title 5;

(7) utilize, on a reimbursable or nonreimbursable basis the services, equipment, personnel, and facilities of any other department or agency of the United States;

(8) establish one or more task forces to assist and advise the Center, composed of individuals who, by reason of experience, are qualified for such service. Each member of any such task force who is not an officer or employee of the Federal Government may receive an amount not to exceed the maximum daily rate prescribed for GS-18 under section 5332 of title 5 for each day such individual is engaged in the actual performance of duties (including traveltime) as a member of such a task force. Members may be reimbursed for travel, subsistence, and necessary expenses incurred in the performance of their duties; and

(9) make advances, progress, and other payments deemed necessary under this chapter without regard to the provisions of section 529 of title 31.

(Pub. L. 94-136, title IV, § 401, Nov. 28, 1975, 89 Stat. 741.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in par. (4), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

SUBCHAPTER V—EVALUATION BY COMPTROLLER GENERAL

§ 2461. Audit, review, and evaluation

(a) The Comptroller General of the United States shall audit, review, and evaluate the implementation of the provisions of this chapter by the Center.

(b) Not less than thirty months nor more than thirty-six months after November 28, 1975, the Comptroller General shall prepare and submit to the Congress a report on his audit conducted pursuant to subsection (a) of this section, which shall contain, but not be limited to, the following:

(1) an evaluation of the effectiveness of the Center's activities;

(2) an evaluation of the effect of the activities of the Center on the efficiency, and effectiveness, of affected Federal agencies in carrying out their assigned functions and duties under this chapter; and

(3) recommendations concerning any legislation he deems necessary, and the reasons therefor, for improving the implementation of the objectives of this chapter as set forth in section 2402 of this title.

(Pub. L. 94-136, title V, § 501, Nov. 28, 1975, 89 Stat. 742.)

SUBCHAPTER VI—AUTHORIZATION OF APPROPRIATIONS

§ 2471. Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this chapter, not to exceed $6,250,000 for the fiscal year ending June 30, 1976, and the subsequent transition period ending September 30, 1976; not to exceed $5,000,000 for the fiscal year ending September 30, 1977; and not to exceed $5,000,000 for the fiscal year ending September 30, 1978. Funds appropriated for any fiscal year shall remain available for obligation until expended.

(Pub. L. 94-136, title VII, § 701, Nov. 28, 1975, 89 Stat. 743.)

CHAPTER 52—ELECTRIC AND HYBRID VEHICLE RESEARCH, DEVELOPMENT, AND DEMONSTRATION

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§ 2501. Congressional findings and policy

(a) The Congress finds and declares that—

(1) the Nation's dependence on foreign sources of petroleum must be reduced, as such dependence jeopardizes national security, inhibits foreign policy, and undermines economic well-being;

(2) the Nation's balance of payments is threatened by the need to import oil for the production of liquid fuel for gasoline-powered vehicles;

(3) the single largest use of petroleum supplies is in the field of transportation, for gasoline- and diesel-powered motor vehicles;

(4) the expeditious introduction of electric and hybrid vehicles into the Nation's transportation fleet would substantially reduce such use and dependence;

(5) such introduction is practicable and would be advantageous because—

(A) most urban driving consists of short trips, which are within the capability of electric and hybrid vehicles;

(B) much rural and agricultural driving of automobiles, tractors, and trucks is within the capability of such vehicles;

(C) electric and hybrid vehicles are more reliable and practical now than in the past because propulsion, control, and battery technologies have improved, and further significant improvements in such technologies are possible in the near term;

(D) electric and hybrid vehicles use little or no energy when stopped in traffic, in contrast to conventional automobiles and trucks;

(E) the power requirements of such vehicles could be satisfied by charging them during off-peak periods when existing electric generating plants are underutilized, thereby permitting more efficient use of existing generating capacity;

(F) such vehicles do not emit any significant pollutants or noise; and

(G) it is environmentally desirable for transportation systems to be powered from central sources, because pollutants emitted from stationary sources (such as electric generating plants) are potentially easier to control than pollutants emitted from moving vehicles; and

(6) the introduction of electric and hybrid vehicles would be facilitated by the establishment of a Federal program of research, development, and demonstration to explore electric and hybrid vehicle technologies.

(b) It is therefore declared to be the policy of the Congress in this chapter to—

(1) encourage and support accelerated research into, and development of, electric and hybrid vehicle technologies;

(2) demonstrate the economic and technological practicability of electric and hybrid vehicles for personal and commercial use in urban areas and for agricultural and personal use in rural areas;

(3) facilitate, and remove barriers to, the use of electric and hybrid vehicles in lieu of gasoline- and diesel-powered motor vehicles, where practicable; and

(4) promote the substitution of electric and hybrid vehicles for many gasoline- and diesel-powered vehicles currently used in routine short-haul, low-load applications, where such substitution would be beneficial.

(Pub. L. 94-413, § 2, Sept. 17, 1976, 90 Stat. 1260.)

SHORT TITLE

Section 1 of Pub. L. 94-413 provided: "That this Act [enacting this chapter, and amending sections 2451 and 2473 of Title 42, The Public Health and Welfare] may be cited as the 'Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976'."

§ 2502. Definitions

As used in this chapter, the term—

(1) "Administrator" means the Administrator of the Energy Research and Development Administration;

(2) "advanced electric or hybrid vehicle" means a vehicle which—

(A) minimizes the total amount of energy to be consumed with respect to its fabrication, operation, and disposal, and represents a substantial improvement over existing electric and hybrid vehicles with respect to the total amount of energy so consumed;

(B) is capable of being mass-produced and operated at a cost and in a manner which is sufficiently competitive to enable it to be produced and sold in numbers representing a reasonable portion of the market;

(C) is safe, damage-resistant, easy to repair, durable, and operates with sufficient performance with respect to acceleration, cold-weather starting, cruising speed, and other performance factors; and

(D) at a minimum, can be produced, distributed, operated, and disposed of in compliance with any applicable requirement of Federal law;

(3) "commercial electric or hybrid vehicle" includes any electric or hybrid vehicle which can be used (A) for business or agricultural production purposes on farms (e.g. tractors and trucks) or in rural areas, or (B) for commercial purposes in urban areas;

(4) "electric vehicle" means a vehicle which is powered by an electric motor drawing current from rechargeable storage batteries, fuel cells, or other portable sources of electrical current, and which may include a nonelectrical source of power designed to charge batteries and components thereof;

(5) "hybrid vehicle" means a vehicle propelled by a combination of an electric motor and an internal combustion engine or other power source and components thereof;

(6) "project" means the Electric and Hybrid Vehicle Research, Development, and Demonstration Project established under section 2503(a) of this title;

(7) "Secretary" means the Secretary of Transportation; and

(8) "small business concern" shall have the meaning prescribed by the Administrator after consultation with the Small Business Administration.

(Pub. L. 94-413, § 3, Sept. 17, 1976, 90 Stat. 1261.)

§ 2503. Duties of the Administrator

(a) Establishment of project

The Administrator shall promptly establish, as an organizational entity within the Energy Research and Development Administration, the Electric and Hybrid Vehicle Research, Development, and Demonstration Project.

(b) Management of project; arrangements with competent agencies

The Administrator shall have the responsibility for the overall management of the project. The Administrator may enter into any agreement or other arrangement with the National Aeronautics and Space Administration, the Department of Transportation, the National Science Foundation, the Environmental Protection Agency, the Department of Housing and Urban Development, the Department of Agriculture, or any other Federal agency, pursuant to which such agency shall conduct such specified parts or aspects of the project as the Administrator deems necessary or appropriate and within the particular competence of such agency, to the extent that such agency has capabilities which would enable it to contribute to the success of the project and the attainment of the purposes of this chapter.

(c) Promotion of research and development; demonstration projects; consumer needs; resulting changes

In providing for the effective management of this project, the Administrator shall have specific responsibility to—

(1) promote basic and applied research on electric and hybrid vehicle batteries, controls, and motors;

(2) determine optimum overall electric and hybrid vehicle design;

(3) conduct demonstration projects with respect to the feasibility of commercial electric and hybrid vehicles (A) by contracting for the purchase or lease of electric and hybrid vehicles for practical use, and (B) by entering into arrangements, with other governmental entities and with nongovernmental entities, for the operation of such vehicles;

(4) ascertain consumer needs and desires so as to match the design of electric and hybrid vehicles to their potential market; and

(5) ascertain the long-term changes in road design, urban planning, traffic management, maintenance facilities, utility rate structures, and tax policies which are needed to facilitate the manufacture and use of electric and hybrid vehicles in accordance with sections 2512 and 2513 of this title.

(Pub. L. 94-413, § 4, Sept. 17, 1976, 90 Stat. 1262.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2502, 2504, 2507 of this title.

§ 2504. Coordination between the Administrator and other agencies

(a) In carrying out the project established under section 2503 of this title, the Administrator shall, to the maximum extent practicable, consult and coordinate with the Secretary, with respect to any functions of the Administrator under this chapter which relate to regulatory activities or other responsibilities of the Secretary, including safety and damageability programs.

(b) Each department, agency, and instrumentality of the executive branch of the Federal Government shall carefully consider any written request from the Administrator, or the head of any agency to which the Administrator has delegated responsibility for specified parts or aspects of the project, to furnish such assistance, on a reimbursable basis, as the Administrator or such head deems necessary to carry out the project and to achieve the purposes of this chapter. Such assistance may include transfer of personnel with their consent and without prejudice to their position and rating.

(Pub. L. 94-413, § 5, Sept. 17, 1976, 90 Stat. 1262.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2507 of this title.

§ 2505. Research and development

The Administrator, acting through appropriate agencies and contractors, shall initiate and provide for the conduct of research and development in areas related to electric and hybrid vehicles, including—

(1) energy storage technology, including batteries and their potential for convenient recharging;

(2) vehicle control systems and overall design for energy conservation, including the use of regenerative braking;

(3) urban design and traffic management to promote maximum transportation-related energy conservation and minimum transportation-related degradation of the environment; and

(4) vehicle design which emphasizes durability, length of practical lifetime, ease of repair, and interchangeability and replaceability of parts.

(Pub. L. 94-413, § 6, Sept. 17, 1976, 90 Stat. 1263.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2506 of this title.

§ 2506. Demonstrations

(a) Data development; baseline data; acquisition of vehicles

Within 12 months after September 17, 1976, the Administrator shall develop data characterizing the present state-of-the-art with respect to electric and hybrid vehicles. The data so developed shall serve as baseline data to be utilized in order (1) to compare improvements in electric and hybrid vehicle technologies; (2) to assist in establishing the performance standards under subsection (b)(1) of this section; and (3) to otherwise assist in carrying out the purposes of this section. In developing any such data, the Administrator shall purchase or lease a reasonable number of such vehicles or enter into such other arrangements as the Administrator deems necessary to carry out the purposes of this subsection.

(b) Performance standards; factors considered; vehicle uses; revision; transmission of standards to Congress

(1) Within 15 months after September 17, 1976, the Administrator shall promulgate rules establishing performance standards for electric and hybrid vehicles to be purchased or leased pursuant to subsection (c)(1) of this section. The standards so developed shall take into account the factors of energy conservation, urban traffic characteristics, patterns of use for "second" vehicles, consumer preferences, maintenance needs, battery recharging characteristics, agricultural requirements, materials demand and their ability to be recycled, vehicle safety and insurability, cost, and other relevant considerations, as such factors and considerations particularly apply to or affect vehicles with electric or hybrid propulsion systems. Such standards are to be developed taking into account (A) the best current state-of-the-art, and (B) reasonable estimates as to the future state-of-the-art, based on projections of results from the research and development conducted under section 2505 of this title. In developing such standards, the Administrator shall consult with appropriate experts concerning design needs for electric and hybrid vehicles which are compatible with long-range urban planning, traffic management, and vehicle safety.

(2) Separate performance standards shall be established under subsection (b)(1) of this section with respect to (A) electric or hybrid vehi-

cles for personal use, and (B) commercial electric or hybrid vehicles. Such performance standards shall represent the minimum level of performance which is required with respect to any vehicles purchased or leased pursuant to subsection (c) of this section. Initial performance standards under subsection (b)(1) of this section shall be set at such levels as the Administrator determines are necessary to promote the acquisition and use of such vehicles for transportation purposes which are within the capability (as determined by the Administrator) of electric and hybrid vehicles.

(3) Such performance standards shall be revised, by rule, periodically as the state-of-the-art improves, except that rules promulgated under subsection (b)(1) of this section shall be amended not later than 6 months prior to the date for contracts specified in subsection (c)(2) of this section.

(4) Before entering into contracts for the production of vehicles under subsection (c)(2) of this section, the Administrator shall transmit to the Speaker of the House of Representatives, the President of the Senate, the Committee on Science and Technology of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate, the performance standards developed under subsection (b)(1) of this section, as revised and currently in effect.

(c) Purchase or lease of vehicles; transmittal of information; advanced vehicles; number; availability; delivery

(1) The Administrator shall, within 6 months after the date of promulgation of performance standards pursuant to subsection (b)(1) of this section, contract for the purchase or lease of 2,500 electric or hybrid vehicles which satisfy the performance standards set forth under subsection (b)(1) of this section. The delivery of such vehicles shall be completed within 39 months after September 17, 1976. If the Administrator determines, on the basis of responses to the solicitation for proposals for such contracts, that less than 2,500 of the electric or hybrid vehicles which satisfy performance standards under subsection (b)(1) of this section will be available within such delivery period, the Administrator shall (A) immediately forward this information along with a detailed justification of such determination to the Speaker of the House of Representatives, the President of the Senate, the Committee on Science and Technology of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate, and (B) contract for the purchase or lease of the maximum number of such vehicles (up to 2,500) that will be available within such delivery period. To the extent practicable, vehicles purchased or leased under such contracts shall represent a cross-section of the available technologies and types of uses of such vehicles.

(2)(A) The Administrator shall, within 6 months after the required amendment of such standards pursuant to subsection (b)(3) of this section and not later than 54 months after September 17, 1976, contract for the purchase or lease of 5,000 advanced electric or hybrid vehicles, which satisfy such amended standards. The final delivery of such vehicles shall be completed within 72 months after September 17, 1976. If the Administrator determines, on the basis of responses to the solicitation for proposals for such contracts, that less than 5,000 of the electric and hybrid vehicles which satisfy performance standards set forth under subsection (b)(3) of this section will be available within the delivery period (including any extension under subsection (c)(2)(B) of this section), the Administrator shall (i) immediately forward this information along with a detailed justification of such determination to the Speaker of the House of Representatives, the President of the Senate, the Committee on Science and Technology of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate, and (ii) contract for the purchase or lease of the maximum number of such vehicles (up to 5,000) that will be available during such delivery period. To the extent practicable, vehicles purchased or leased under such contracts shall represent a cross-section of the available technologies and types of uses of such vehicles.

(B) The Administrator shall extend the delivery period for such vehicles for a period not to exceed 6 additional months, if he finds that such an extension in delivery date would result in the delivery of advanced electric and hybrid vehicles which would add to the total number of vehicles to be purchased or leased (up to 5,000) and which would not otherwise be available. If the Administrator finds that such an extension is appropriate and necessary for the delivery of such vehicles, he shall so notify the Speaker of the House of Representatives, the President of the Senate, the Committee on Science and Technology of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

(d) Arrangements for the demonstration of vehicles

The Administrator, in supervising the demonstration of vehicles acquired under subsection (c) of this section, shall make such arrangements as may be necessary or appropriate—

(1)(A) to make such vehicles available to Federal agencies and to State or local governments and other persons for individual or business use (including farms). The individuals and businesses involved shall be selected by an equitable process which assures that the Administrator will receive accurate and adequate data on vehicle performance, including representative geographical and climatological information and data on user reaction to the utilization of electric and hybrid vehicles. Such individuals and businesses shall be given the option of purchasing or leasing such vehicles under terms and conditions which will promote their widespread use;

(B) to pay the differential operating costs of such vehicles to the extent necessary to assure the adequate demonstration of such vehicles;

(2) for demonstration maintenance projects, including maintenance organization and equipment needs and model training projects for maintenance procedures; and

(3) for the dissemination of data on electric and hybrid vehicle safety and operating characteristics (including nontechnical descriptive data which shall be made available by the

Government Printing Office) (A) to Federal, State, and local consumer affairs agencies and groups; (B) to Federal, State, and local agricultural and rural agencies and groups; and (C) to the public.

(e) Displacement of private procurement; reports to congressional committees; reduction of number purchased

(1) At least 60 days prior to entering into any contract for the purchase or lease of any electric or hybrid vehicle under subsection (c)(1) of this section or any advanced electric or hybrid vehicle under subsection (c)(2) of this section, the Administrator shall determine (A) if the purchase or lease of the number of such vehicles specified in such subsection (c)(1) or (c)(2) of this section will, with high probability, displace the normal level of private procurement of such vehicles which would conform to the applicable performance standards promulgated pursuant to subsection (b) of this section and which would be used in the United States, and (B) if such displacement will occur, the necessary extent of such displacement in order to carry out the purposes of this chapter. At the time any such determination is made, the Administrator shall transmit such determination, along with all relevant information in support thereof, to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(2) The Administrator shall reduce the number of vehicles for which he shall contract for the purchase or lease under subsection (c)(1) or (c)(2) of this section by the number determined under subsection (e)(1)(A) of this section as modified by subsection (e)(1)(B) of this section, except in no event shall he contract for the purchase or lease pursuant to subsection (c)(1) of this section of less than 1,000 electric or hybrid vehicles, and in no event shall he contract for the purchase or lease pursuant to subsection (c)(2) of this section of less than 2,500 advanced electric or hybrid vehicles unless he determines on the basis of responses to the solicitations for proposals for such contracts, under the provisions of subsections (c)(1) and (c)(2) of this section that lesser numbers of such vehicles which satisfy the applicable performance standards will be available within the delivery periods. All other provisions of subsection (c) of this section shall apply.

(Pub. L. 94-413, § 7, Sept. 17, 1976, 90 Stat. 1263; S.Res. 4, Feb. 4, 1977.)

CHANGE OF NAME

The Committee on Commerce of the Senate was abolished and replaced by the Committee on Commerce, Science, and Transportation, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2510, 2512, 2513 of this title.

§ 2507. Contracts

(a) Research, development, and demonstration

The Administrator shall provide funds, by contract, to initiate, continue, supplement, and maintain research, development, and demonstration activities which are necessary to carry out the purposes of the project. The Administrator may enter into such contracts with any Federal agency, laboratory, university, nonprofit organization, industrial organization, public or private agency, institution, organization, corporation, partnership, or individual.

(b) Consultation

In addition to the requirements of sections 2503 and 2504 of this title, the Administrator, in the exercise of his duties and responsibilities under this section, shall consult with the Department of Transportation, the Environmental Protection Agency, the Federal Energy Administration, the National Aeronautics and Space Administration, the Department of Agriculture, and representatives of other appropriate Federal agencies, and shall establish procedures for periodic consultation with representatives of science, industry, and such other groups as may have special expertise in electric and hybrid vehicle research, development, and demonstration.

(c) Rules of the Administrator; funding applications; required advertising

Each contract under this section shall be entered into in accordance with such rules as the Administrator may prescribe in accordance with the provisions of this section. Each application for funding shall be made in writing in such form and with such content and other submissions as the Administrator shall require. The Administrator may enter into contracts under this section without regard to section 5 of title 41.

(Pub. L. 94-413, § 8, Sept. 17, 1976, 90 Stat. 1266.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2511 of this title.

§ 2508. Encouragement and protection of small business

(a) Opportunity to participate

The Administrator shall take such steps as are feasible to assure that small business concerns have a realistic and adequate opportunity to participate in the project.

(b) Reservation of funds

To assist in accomplishing the objectives of subsection (a) of this section, the Administrator shall reserve, for contracts with small business concerns, a reasonable portion of the funds made available pursuant to this chapter for research, development, or demonstration of electric or hybrid vehicles.

(c) Contract terms and conditions; planning grants

The Administrator shall, in addition to the requirements set forth in subsections (a) and (b) of this section—

(1) include in all contracts for research, development, or demonstration of electric or hybrid vehicles such terms, conditions, and

payment schedules as may assist in meeting the needs of small business concerns, and shall take steps to avoid the inclusion in such contracts of any terms, conditions, or penalties which would tend to prevent such concerns from participating in the program under this chapter; and

(2) make planning grants available to qualified small business concerns which require assistance in developing, submitting, and entering into such contracts.

(Pub. L. 94-413, § 9, Sept. 17, 1976, 90 Stat. 1266.)

§ 2509. Loan guarantees

(a) Congressional policy

It is the policy of the Congress to assist in the introduction into the Nation's transportation fleet of electric and hybrid vehicles and to assure that qualified small business concerns and other qualified borrowers are not excluded from participation in such development due to lack of adequate capital. Accordingly, it is the policy of the Congress to provide guarantees of loans made for such purposes.

(b) Encouragement of commercial production; purpose of loans

In order to encourage the commercial production of electric and hybrid vehicles, the Administrator is authorized to guarantee, and to enter into commitments to guarantee, principal and interest on loans made by lenders to qualified borrowers, primarily small business concerns, for the purposes of—

(1) research and development related to electric and hybrid vehicle technology;

(2) prototype development for such vehicles and parts thereof;

(3) construction of capital equipment related to research on, and development and production of, electric and hybrid vehicles and components; or

(4) initial operating expenses associated with the development and production of electric and hybrid vehicles and components.

(c) Maximum amount of loan guarantee

Any guarantee under this section shall apply only to so much of the principal amount of the loan involved as does not exceed 90 percentum of the aggregate cost of the activity with respect to which the loan is made.

(d) Terms and conditions of guarantee

Loan guarantees under this section shall be on such terms and conditions as the Administrator determines, except that a guarantee shall be made under this section only if—

(1) the loan bears interest at a rate not to exceed such annual percent on the principal obligation outstanding as the Administrator determines to be reasonable, taking into account the range of interest rates prevailing in the private sector for similar loans and risks by the United States;

(2) the terms of such loan require full repayment over a period not to exceed 15 years;

(3) in the judgment of the Administrator, the amount of the loan (when combined with amounts available to the qualified borrower from other sources) will be sufficient to carry out the activity with respect to which the loan is made;

(4) in the judgment of the Administrator, there is reasonable assurance of repayment of the loan by the qualified borrower; and

(5) no loan shall be guaranteed by the Administrator under subsection (b) of this section unless the Administrator finds that no other reasonable means of financing or refinancing is reasonably available to the applicant.

(e) Maximum guarantee per loan; maximum of aggregate guarantees

(1) The amount of the guarantee of any loan shall not exceed $3,000,000, unless the Administrator finds that a higher guarantee level for specific loan guarantees is necessary in order to carry out the purposes of this chapter. If the Administrator makes such finding, he shall immediately report that finding to the Speaker of the House of Representatives, the President of the Senate, the Committee on Science and Technology of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

(2) The aggregate amount of guarantees outstanding under this section at any one time shall not exceed $60,000,000.

(f) Qualified borrower

As used in this section, the term "qualified borrower" means any partnership, corporation, or other legal entity which (as determined by the Administrator) has presented satisfactory evidence of an interest in electric or hybrid vehicle technology and is capable of performing research or completing the development and production of electric or hybrid vehicles or any components thereof in an acceptable manner.

(g) Payment of interest; default; recovery of losses

(1) With respect to any loan guaranteed pursuant to this section, the Administrator is authorized to enter into a contract to pay, and to pay, the lender for and on behalf of the borrower the interest charges which become due and payable on the unpaid balance of any such loan if the Administrator finds—

(A) that the borrower is unable to meet interest charges, that it is in the public interest to permit the borrower to continue to pursue the purposes of his project, and that the probable net cost to the Federal Government in paying such interest will be less than that which would result in the event of a default; and

(B) that the amount of such interest charges which the Administrator is authorized to pay shall be no greater than the amount of interest which the borrower is obligated to pay under the loan agreement.

(2) In the event of any default by a qualified borrower on a guaranteed loan, the Administrator is authorized to make payment in accordance with the guarantee, and the Attorney General shall take such action as may be appropriate to recover the amounts of such payments (including any payment of interest under paragraph (1)) from such assets of the defaulting borrowers as are associated with the activity with respect to which the loan was made or from any other surety included in the terms of the guarantee.

(h) Five year limitation

No loan guarantee shall be made, or interest assistance contracts entered into, pursuant to this section, after the expiration of the 5-year period following September 17, 1976.

(i) Citizenship of applicant; corporations; waiver

An applicant seeking a guarantee under this section must be a citizen or national of the United States. A corporation, partnership, firm, or association shall not be deemed to be a citizen or national of the United States unless the Administrator determines that it satisfactorily meets all the requirements of section 802 of title 46, for determining such citizenship, except that the provisions in section 802(a) of title 46 concerning (1) the citizenship of officers or directors of a corporation, and (2) the interest required to be owned in the case of a corporation, association, or partnership operating a vessel in the coastwise trade, shall not be applicable. The Administrator, in consultation with the Secretary of State, may waive such requirements in the case of a corporation, partnership, firm, or association, controlling interest in which is owned by citizens of countries which are participants in the International Energy Agreement.

(Pub. L. 94-413, § 10, Sept. 17, 1976, 90 Stat. 1267; S. Res. 4, Feb. 4, 1977.)

CHANGE OF NAME

The Committee on Commerce of the Senate was abolished and replaced by the Committee on Commerce, Science, and Transportation, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

§ 2510. Use of electric and hybrid vehicles by federal agencies

The Postmaster General of the United States Postal Service, the Administrator of the General Services Administration, the Secretary of Defense, and the heads of other Federal agencies shall—

(1) carry out a study of the practicability of using electric and hybrid vehicles in the performance of some or all of the functions of their agencies; and

(2) arrange for the introduction of electric and hybrid vehicles into their fleets as soon as possible.

For competitive procurement purposes in purchasing such vehicles, life-cycle costing and any beneficial air pollution control characteristics of electric and hybrid vehicles shall be fully taken into account. If the head of the agency involved determines that electric or hybrid vehicles are technologically practicable, but that they are not completely economically competitive with conventional vehicles, the Administrator may, for purposes of the demonstration program described in section 2506 of this title, pay to such agency the incremental costs of the electric or hybrid vehicles, including differential operating costs.

(Pub. L. 94-413, § 11, Sept. 17, 1976, 90 Stat. 1268.)

§ 2511. Patents

Section 5908 of title 42 shall apply to any contract (including any assignment, substitution of parties, or subcontract thereunder), entered into, made, or issued by the Administrator pursuant to section 2507 of this title.

(Pub. L. 94-413, § 12, Sept. 17, 1976, 90 Stat. 1269.)

§ 2512. Studies

(a) Bias of surface transportation systems; submission of report

The Administrator shall conduct a study to determine the existence of any tax, regulatory, traffic, urban design, rural electrical, or other institutional factor which tends or may tend to bias surface transportation systems toward vehicles of particular characteristics. The Administrator shall submit a report to the Congress on the findings and conclusions of such study, within 1 year after September 17, 1976. The report shall include any legislative or other recommendations of the Administrator.

(b) Material demand and pollution effect; impact statement

The Administrator shall conduct a continuing assessment of the long-range material demand and pollution effects which may result from or in connection with the electrification of urban traffic. Such assessment shall include a statement of the Administrator's current findings in each report submitted under section 2513 of this title. Any environmental impact statement which may be filed under a Federal law with respect to research, development, or demonstration activities under this chapter shall include reference to the matters which are subject to assessment under this subsection.

(c) Incentives to encourage utilization

The Administrator shall perform, or cause to be performed, studies and research on incentives to promote broader utilization and consumer acceptance of electric and hybrid vehicle technologies. A description and a statement of the findings of such studies and research activities shall be included in each report submitted under section 2513 of this title.

(d) Safety standards and regulations

The Secretary shall conduct a study of the current and future applicability of safety standards and regulations to electric and hybrid vehicles. The Secretary shall report the results of such study to the Administrator and the Congress within 1 year after September 17, 1976.

(e) Regenerative braking systems

The Administrator shall conduct a study to determine the overall effectiveness and feasibility of including regenerative braking systems on electric and other automobiles in order to recover energy. In such study the Administrator shall—

(1) review the history of regenerative braking devices;

(2) describe relevant experimental test data and theoretical calculations with respect to such devices;

(3) assess the net energy impacts and cost effectiveness of such devices;

(4) examine present patents and patent policy regarding such devices; and

(5) determine whether regenerative braking should be used on some of the advanced electric or hybrid vehicles to be purchased or leased pursuant to section 2506(c)(2) of this title.

The Administrator shall submit a report to the Congress on the findings and conclusions of such study within 1 year after September 17, 1976.

(Pub. L. 94-413, § 13, Sept. 17, 1976, 90 Stat. 1269.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2503 of this title.

§ 2513. Annual report

The Administrator shall submit to the Congress annually a report on all activities being undertaken or carried out pursuant to the provisions of this chapter, including—

(1) such projections and estimates as may be necessary to evaluate the progress of the project and to indicate the extent to which, and the pace at which, the objectives of this chapter are being achieved; and

(2) a statement of the extent to which imported automobile chassis or components are being used, or are desirable, for the production of vehicles under section 2506 of this title, and of the extent to which restrictions imposed by law or regulation upon the importation or use of such chassis or components are impeding the achievement of the purposes of this chapter.

Each such report shall also include any recommendations which the Administrator may deem appropriate for legislation or related action which might further the purposes of this chapter.

(Pub. L. 94-413, § 14, Sept. 17, 1976, 90 Stat. 1270.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2503, 2512 of this title.

§ 2514. Authorization for appropriations

(a) There are authorized to be appropriated to the Administrator, for purposes of carrying out this chapter, (1) not to exceed $30,000,000 for the fiscal year ending September 30, 1977, except that at least $10,000,000 of such authorization shall be allocated for battery research and development; (2) not to exceed $40,000,000 for the fiscal year ending September 30, 1978; (3) not to exceed $25,000,000 for the fiscal year ending September 30, 1979; (4) not to exceed $20,000,000 for the fiscal year ending September 30, 1980; and (5) not to exceed $45,000,000 for the fiscal year ending September 30, 1981. Any amount appropriated pursuant to this section shall remain available until expended, and any amount authorized for any fiscal year prior to the fiscal year ending September 30, 1981, but not appropriated, may be appropriated for any succeeding fiscal year through the fiscal year ending September 30, 1983.

(b) Any moneys received by the Administrator from vehicle sales or leases or other activities under this chapter may be retained and used for purposes of carrying out this chapter, notwithstanding the provisions of section 484 of title 31, and may remain available until expended; but the amount authorized to be appropriated for any fiscal year under subsection (a) of this section shall be reduced by the amount of the moneys so received in that year.

(Pub. L. 94-413, § 16, Sept. 17, 1976, 90 Stat. 1271.)

CHAPTER 53—TOXIC SUBSTANCES CONTROL

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§ 2601. Findings, policy, and intent

(a) Findings

The Congress finds that—

(1) human beings and the environment are being exposed each year to a large number of chemical substances and mixtures;

(2) among the many chemical substances and mixtures which are constantly being developed and produced, there are some whose manufacture, processing, distribution in commerce, use, or disposal may present an unreasonable risk of injury to health or the environment; and

(3) the effective regulation of interstate commerce in such chemical substances and mixtures also necessitates the regulation of intrastate commerce in such chemical substances and mixtures.

(b) Policy

It is the policy of the United States that—

(1) adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures;

(2) adequate authority should exist to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment, and to take action with respect to chemical substances and mixtures which are imminent hazards; and

(3) authority over chemical substances and mixtures should be exercised in such a manner as not to impede unduly or create unnecessary economic barriers to technological innovation while fulfilling the primary purpose of this chapter to assure that such innovation and commerce in such chemical substances and mixtures do not present an unreasonable risk of injury to health or the environment.

(c) Intent of Congress

It is the intent of Congress that the Administrator shall carry out this chapter in a reasonable and prudent manner, and that the Administrator shall consider the environmental, economic, and social impact of any action the Administrator takes or proposes to take under this chapter.

(Pub. L. 94-469, § 2, Oct. 11, 1976, 90 Stat. 2003.)

EFFECTIVE DATE

Section 31 of Pub. L. 94-469 provided that: "Except as provided in section 4(f) [section 2603(f) of this title], this Act [this chapter] shall take effect on January 1, 1977."

SHORT TITLE

Section 1 of Pub. L. 94-469 provided that: "This Act [enacting this chapter and provisions set out as notes under this section] may be cited as the 'Toxic Substances Control Act'."

§ 2602. Definitions

As used in this chapter:

(1) the term "Administrator" means the Administrator of the Environmental Protection Agency.

(2)(A) Except as provided in subparagraph (B), the term "chemical substance" means any organic or inorganic substance of a particular molecular identity, including—

(i) any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature and

(ii) any element or uncombined radical.

(B) Such term does not include—

(i) any mixture,

(ii) any pesticide (as defined in the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.]) when manufactured, processed, or distributed in commerce for use as a pesticide,

(iii) tobacco or any tobacco product,

(iv) any source material, special nuclear material, or byproduct material (as such terms are defined in the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] and regulations issued under such Act),

(v) any article the sale of which is subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 [26 U.S.C. 4181] (determined without regard to any exemptions from such tax provided by section 4182 or 4221 or any other provision of such Code), and

(vi) any food, food additive, drug, cosmetic, or device (as such terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321]) when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.

The term "food" as used in clause (vi) of this subparagraph includes poultry and poultry products (as defined in sections 4(e) and 4(f) of the Poultry Products Inspection Act [21 U.S.C. 453(e) and (f)]), meat and meat food products (as defined in section 1(j) of the Federal Meat Inspection Act [21 U.S.C. 601(j)]), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act [21 U.S.C. 1033]).

(3) The term "commerce" means trade, traffic, transportation, or other commerce (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, transportation, or commerce described in clause (A).

(4) The terms "distribute in commerce" and "distribution in commerce" when used to describe an action taken with respect to a chemical substance or mixture or article containing a substance or mixture mean to sell, or the sale of, the substance, mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of, the substance, mixture, or article; or to hold, or the holding of, the substance, mixture, or article after its introduction into commerce.

(5) The term "environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(6) The term "health and safety study" means any study of any effect of a chemical substance or mixture on health or the environment or on both, including underlying data and epidemiological studies, studies of occupational exposure to a chemical substance or mixture, toxicological, clinical, and ecological studies of a chemical substance or mixture, and any test performed pursuant to this chapter.

(7) The term "manufacture" means to import into the customs territory of the United States (as defined in general headnote 2 of the Tariff Schedules of the United States), produce, or manufacture.

(8) The term "mixture" means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that such term does include any combination which occurs, in whole or in part, as a result of a chemical reaction if none of the chemical substances comprising the combination is a new chemical substance and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined.

(9) The term "new chemical substance" means any chemical substance which is not included in the chemical substance list compiled and published under section 2607(b) of this title.

(10) The term "process" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce—

(A) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or

(B) as part of an article containing the chemical substance or mixture.

(11) The term "processor" means any person who processes a chemical substance or mixture.

(12) The term "standards for the development of test data" means a prescription of—

(A) the—

(i) health and environmental effects, and

(ii) information relating to toxicity, persistence, and other characteristics which affect health and the environment,

for which test data for a chemical substance or mixture are to be developed and any analysis that is to be performed on such data, and

(B) to the extent necessary to assure that data respecting such effects and characteristics are reliable and adequate—

(i) the manner in which such data are to be developed,

(ii) the specification of any test protocol or methodology to be employed in the development of such data, and

(iii) such other requirements as are necessary to provide such assurance.

(13) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

(14) The term "United States", when used in the geographic sense, means all of the States.

(Pub. L. 94-469, § 3, Oct. 11, 1976, 90 Stat. 2004.)

References in Text

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in par. (2)(B)(ii), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§ 136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables volume.

The Atomic Energy Act of 1954, referred to in par. (2)(B)(iv), is act Aug. 30, 1954, ch. 1073, 68 Stat. 921, which is classified generally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables volume.

General headnote 2 of the Tariff Schedules of the United States, referred to in par. (7), is set forth in section 1202(2) of Title 19, Customs Duties.

§ 2603. Testing of chemical substances and mixtures

(a) Testing requirements

If the Administrator finds that—

(1)(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; and

(2) in the case of a mixture, the effects which the mixture's manufacture, distribution in commerce, processing, use, or disposal or any combination of such activities may have on health or the environment may not be reasonably and more efficiently determined or predicted by testing the chemical substances which comprise the mixture;

the Administrator shall by rule require that testing be conducted on such substance or mixture to develop data with respect to the health and environmental effects for which there is an insufficiency of data and experience and which are relevant to a determination that the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture, or that any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment.

(b) Testing requirement rule

(1) A rule under subsection (a) of this section shall include—

(A) identification of the chemical substance or mixture for which testing is required under the rule,

(B) standards for the development of test data for such substance or mixture, and

(C) with respect to chemical substances which are not new chemical substances and to mixtures, a specification of the period (which period may not be of unreasonable duration) within which the persons required to conduct the testing shall submit to the Administrator data developed in accordance with the standards referred to in subparagraph (B).

In determining the standards and period to be included, pursuant to subparagraphs (B) and (C), in a rule under subsection (a) of this section, the Administrator's considerations shall include the relative costs of the various test protocols and methodologies which may be required under the rule and the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule. Any such rule may require the submission to the Administrator of preliminary data during the period prescribed under subparagraph (C).

(2)(A) The health and environmental effects for which standards for the development of test data may be prescribed include carcinogenesis, mutagenesis, teratogenesis, behavioral disorders, cumulative or synergistic effects, and any other effect which may present an unreasonable risk of injury to health or the environment. The characteristics of chemical substances and mixtures for which such standards may be prescribed include persistence, acute toxicity, subacute toxicity, chornic toxicity, and any other characteristic which may present such a risk. The methodologies that may be prescribed in such standards include epidemiologic studies, serial or hierarchical tests, in vitro tests, and whole animal tests, except that before prescribing epidemiologic studies of employees, the Administrator shall consult with the Director of the National Institute for Occupational Safety and Health.

(B) From time to time, but not less than once each 12 months, the Administrator shall review the adequacy of the standards for development of data prescribed in rules under subsection (a) of this section and shall, if necessary, institute proceedings to make appropriate revisions of such standards.

(3)(A) A rule under subsection (a) of this section respecting a chemical substance or mixture shall require the persons described in subparagraph (B) to conduct tests and submit data to the Administrator on such substance or mixture, except that the Administrator may permit two or more of such persons to designate one such person or a qualified third party to conduct such tests and submit such data on behalf of the persons making the designation.

(B) The following persons shall be required to conduct tests and submit data on a chemical substance or mixture subject to a rule under subsection (a) of this section:

(i) Each person who manufactures or intends to manufacture such substance or mixture if the Administrator makes a finding described in subsection (a)(1)(A)(ii) or (a)(1)(B)(ii) of this section with respect to the manufacture of such substance or mixture.

(ii) Each person who processes or intends to process such substance or mixture if the Administrator makes a finding described in subsection (a)(1)(A)(ii) or (a)(1)(B)(ii) of this section with respect to the processing of such substance or mixture.

(iii) Each person who manufactures or processes or intends to manufacture or process such substance or mixture if the Administrator makes a finding described in subsection (a)(1)(A)(ii) or (a)(1)(B)(ii) of this section with respect to the distribution in commerce, use, or disposal of such substance or mixture.

(4) Any rule under subsection (a) of this section requiring the testing of and submission of data for a particular chemical substance or mixture shall expire at the end of the reimbursement period (as defined in subsection (c)(3)(B) of this section) which is applicable to test data for such substance or mixture unless the Administrator repeals the rule before such date; and a rule under subsection (a) of this section requiring the testing of and submission of data for a category of chemical substances or mixtures shall expire with respect to a chemical substance or mixture included in the category at the end of the reimbursement period (as so defined) which is applicable to test data for such substance or mixture unless the Administrator before such date repeals the application of the rule to such substance or mixture or repeals the rule.

(5) Rules issued under subsection (a) of this section (and any substantive amendment thereto or repeal thereof) shall be promulgated pursuant to section 553 of title 5 except that (A) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (B) a transcript shall be made of any oral presentation; and (C) the Administrator shall make and publish with the rule the findings described in paragraph (1)(A) or (1)(B) of subsection (a) of this section and, in the case of a rule respecting a mixture, the finding described in paragraph (2) of such subsection.

(c) Exemption

(1) Any person required by a rule under subsection (a) of this section to conduct tests and submit data on a chemical substance or mixture may apply to the Administrator (in such form and manner as the Administrator shall prescribe) for an exemption from such requirement.

(2) If, upon receipt of an application under paragraph (1), the Administrator determines that—

(A) the chemical substance or mixture with respect to which such application was submitted is equivalent to a chemical substance or mixture for which data has been submitted to the Administrator in accordance with a rule under subsection (a) of this section or for which data is being developed pursuant to such a rule, and

(B) submission of data by the applicant on such substance or mixture would be duplicative of data which has been submitted to the Administrator in accordance with such rule or which is being developed pursuant to such rule,

the Administrator shall exempt, in accordance with paragraph (3) or (4), the applicant from conducting tests and submitting data on such substance or mixture under the rule with respect to which such application was submitted.

(3)(A) If the exemption under paragraph (2) of any person from the requirement to conduct tests and submit test data on a chemical substance or mixture is granted on the basis of the existence of previously submitted test data and if such exemption is granted during the reimbursement period for such test data (as prescribed by subparagraph (B)), then (unless such person and the persons referred to in clauses (i) and (ii) agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount determined under rules of the Administrator)—

(i) to the person who previously submitted such test data, for a portion of the costs incurred by such person in complying with the requirement to submit such data, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to such costs, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance or mixture, the Administrator shall, after consultation with the Attorney General and the Federal Trade Commission, consider all relevant factors, including the effect on the competitive position of the person required to provide reimbursement in relation to the person to be reimbursed and the share of the market for such substance or mixture of the person required to provide reimbursement in relation to the share of such market of the persons to be reimbursed. An order under this subparagraph shall, for purposes of judicial review, be considered final agency action.

(B) For purposes of subparagraph (A), the reimbursement period for any test data for a chemical substance or mixture is a period—

(i) beginning on the date such data is submitted in accordance with a rule promulgated under subsection (a) of this section, and

(ii) ending—

(I) five years after the date referred to in clause (i), or

(II) at the expiration of a period which begins on the date referred to in clause (i) and which is equal to the period which the Administrator determines was necessary to develop such data,

whichever is later.

(4)(A) If the exemption under paragraph (2) of any person from the requirement to conduct tests and submit test data on a chemical substance or mixture is granted on the basis of the fact that test data is being developed by one or more persons pursuant to a rule promulgated under subsection (a) of this section, then (unless such person and the persons referred to in clauses (i) and (ii) agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount determined under rules of the Administrator)—

(i) to each such person who is developing such test data, for a portion of the costs incurred by each such person in complying with such rule, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to the costs of complying with such rule, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance or mixture, the Administrator shall, after consultation with the Attorney General and the Federal Trade Commission, consider the factors described in the second sentence of paragraph (3)(A). An order under this subparagraph shall, for purposes of judicial review, be considered final agency action.

(B) If any exemption is granted under paragraph (2) on the basis of the fact that one or more persons are developing test data pursuant to a rule promulgated under subsection (a) of this section and if after such exemption is granted the Administrator determines that no such person has complied with such rule, the Administrator shall (i) after providing written notice to the person who holds such exemption and an opportunity for a hearing, by order terminate such exemption, and (ii) notify in writing such person of the requirements of the rule with respect to which such exemption was granted.

(d) Notice

Upon the receipt of any test data pursuant to a rule under subsection (a) of this section, the Administrator shall publish a notice of the receipt of such data in the Federal Register within 15 days of its receipt. Subject to section 2613 of this title, each such notice shall (1) identify the chemical substance or mixture for which data have been received; (2) list the uses or intended uses of such substance or mixture and the information required by the applicable standards for the development of test data; and (3) describe the nature of the test data developed. Except as otherwise provided in section 2613 of this title, such data shall be made available by the Administrator for examination by any person.

(e) Priority list

(1)(A) There is established a committee to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule under subsection (a) of this section. In making such a recommendation with respect to any chemical substance or mixture, the committee shall consider all relevant factors, including—

(i) the quantities in which the substance or mixture is or will be manufactured,

(ii) the quantities in which the substance or mixture enters or will enter the environment,

(iii) the number of individuals who are or will be exposed to the substance or mixture in their places of employment and the duration of such exposure,

(iv) the extent to which human beings are or will be exposed to the substance or mixture,

(v) the extent to which the substance or mixture is closely related to a chemical substance or mixture which is known to present an unreasonable risk of injury to health or the environment,

(vi) the existence of data concerning the effects of the substance or mixture on health or the environment,

(vii) the extent to which testing of the substance or mixture may result in the development of data upon which the effects of the substance or mixture on health or the environment can reasonably be determined or predicted, and

(viii) the reasonably foreseeable availability of facilities and personnel for performing testing on the substance or mixture.

The recommendations of the committee shall be in the form of a list of chemical substances and mixtures which shall be set forth, either by individual substance or mixture or by groups of substances or mixtures, in the order in which the committee determines the Administrator should take action under subsection (a) of this section with respect to the substances and mixtures. In establishing such list, the committee shall give priority attention to those chemical substances and mixtures which are known to cause or contribute to or which are suspected of causing or contributing to cancer, gene mutations, or birth defects. The committee shall designate chemical substances and mixtures on the list with respect to which the committee determines the Administrator should, within 12 months of the date on which such substances and mixtures are first designated, initiate a proceeding under subsection (a) of this section. The total number of chemical substances and mixtures on the list which are designated under the preceding sentence may not, at any time, exceed 50.

(B) As soon as practicable but not later than nine months after January 1, 1977, the committee shall publish in the Federal Register and transmit to the Administrator the list and designations required by subparagraph (A) together with the reasons for the committee's inclusion of each chemical substance or mixture on the list. At least every six months after the date of the transmission to the Administrator of the list pursuant to the preceding sentence, the committee shall make such previsions in the list as it determines to be necessary and shall transmit them to the Administrator together with the committee's reasons for the revisions. Upon receipt of any such revision, the Administrator shall publish in the Federal Register the list with such revision, the reasons for such revision, and the designations made under subparagraph (A). The Administrator shall provide reasonable opportunity to any interested person to file with the Administrator written comments on the committee's list, any revision of such list by the committee, and designations made by the committee, and shall make such comments available to the public. Within the 12-month period beginning on the date of the first inclusion on the list of a chemical substance or mixture designated by the committee under subparagraph (A) the Administrator shall with respect to such chemical substance or mixture either initiate a rulemaking proceeding under subsection (a) of this section or if such a proceeding is not initiated within such period, publish in the Federal Register the Administrator's reason for not initiating such a proceeding.

(2)(A) The committee established by paragraph (1)(A) shall consist of eight members as follows:

(i) One member appointed by the Administrator from the Environmental Protection Agency.

(ii) One member appointed by the Secretary of Labor from officers or employees of the Department of Labor engaged in the Secretary's activities under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.].

(iii) One member appointed by the Chairman of the Council on Environmental Quality from the Council or its officers or employees.

(iv) One member appointed by the Director of the National Institute for Occupational Safety and Health from officers or employees of the Institute.

(v) One member appointed by the Director of the National Institute of Environmental Health Sciences from officers or employees of the Institute.

(vi) One member appointed by the Director of the National Cancer Institute from officers or employees of the Institute.

(vii) One member appointed by the Director of the National Science Foundation from officers or employees of the Foundation.

(viii) One member appointed by the Secretary of Commerce from officers or employees of the Department of Commerce.

(B)(i) An appointed member may designate an individual to serve on the committee on the member's behalf. Such a designation may be made only with the approval of the applicable appointing authority and only if the individual is from the entity from which the member was appointed.

(ii) No individual may serve as a member of the committee for more than four years in the aggregate. If any member of the committee leaves the entity from which the member was appointed, such member may not continue as a member of the committee, and the member's position shall be considered to be vacant. A vacancy in the committee shall be filled in the same manner in which the original appointment was made.

(iii) Initial appointments to the committee shall be made not later than the 60th day after January 1, 1977. Not later than the 90th day after such date the members of the committee shall hold a meeting for the selection of a chairperson from among their number.

(C)(i) No member of the committee, or designee of such member, shall accept employment or compensation from any person subject to any requirement of this chapter or of any rule promulgated or order issued thereunder, for a period of at least 12 months after termination of service on the committee.

(ii) No person, while serving as a member of the committee, or designee of such member, may own any stocks or bonds, or have any pecuniary interest, of substantial value in any person engaged in the manufacture, processing, or distribution in commerce of any chemical substance or mixture subject to any requirement of this chapter or of any rule promulgated or order issued thereunder.

(iii) The Administrator, acting through attorneys of the Environmental Protection Agency, or the Attorney General may bring an action in the appropriate district court of the United States to restrain any violation of this subparagraph.

(D) The Administrator shall provide the committee such administrative support services as may be necessary to enable the committee to carry out its function under this subsection.

(f) Required actions

Upon the receipt of—

(1) any test data required to be submitted under this chapter, or

(2) any other information available to the Administrator,

which indicates to the Administrator that there may be a reasonable basis to conclude that a chemical substance or mixture presents or will present a significant risk of serious or widespread harm to human beings from cancer, gene mutations, or birth defects, the Administrator shall, within the 180-day period beginning on the date of the receipt of such data or information, initiate appropriate action under section 2604, 2605, or 2606 of this title to prevent or reduce to a sufficient extent such risk or publish in the Federal Register a finding that such risk is not unreasonable. For good cause shown the Administrator may extend such period for an additional period of not more than 90 days. The Administrator shall publish in the Federal Register notice of any such extension and the reasons therefor. A finding by the Administrator that a risk is not unreasonable shall be considered agency action for purposes of judicial review under chapter 7 of title 5. This subsection shall not take effect until two years after January 1, 1977.

(g) Petition for standards for the development of test data

A person intending to manufacture or process a chemical substance for which notice is required under section 2604(a) of this title and who is not required under a rule under subsection (a) of this section to conduct tests and submit data on such substance may petition the Administrator to prescribe standards for the development of test data for such substance. The Administrator shall by order either grant or deny any such petition within 60 days of its receipt. If the petition is granted, the Administrator shall prescribe such standards for such substance within 75 days of the date the petition is granted. If the petition is denied, the Administrator shall publish, subject to section 2613 of this title, in the Federal Register the reasons for such denial.

(Pub. L. 94-469, § 4, Oct. 11, 1976, 90 Stat. 2006.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in text, is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, which is classified generally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables volume.

EFFECTIVE DATE

Section effective Jan. 1, 1977, except as provided in subsec. (f) of this section, see section 31 of Pub. L. 94-469, set out as a note under section 2601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2604, 2606, 2607, 2611, 2613, 2614, 2617 to 2620, 2623, 2625, 2626, 2630 of this title.

§ 2604. Manufacturing and processing notices

(a) In general

(1) Except as provided in subsection (h) of this section, no person may—

(A) manufacture a new chemical substance on or after the 30th day after the date on which the Administrator first publishes the list required by section 2607(b) of this title, or

(B) manufacture or process any chemical substance for a use which the Administrator has determined, in accordance with paragraph (2), is a significant new use,

unless such person submits to the Administrator, at least 90 days before such manufacture or processing, a notice, in accordance with subsection (d) of this section, of such person's intention to manufacture or process such substance and such person complies with any applicable requirement of subsection (b) of this section.

(2) A determination by the Administrator that a use of a chemical substance is a significant new use with respect to which notification is required under paragraph (1) shall be made by a rule promulgated after a consideration of all relevant factors, including—

(A) the projected volume of manufacturing and processing of a chemical substance,

(B) the extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance,

(C) the extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance, and

(D) the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

(b) Submission of test data

(1)(A) If (i) a person is required by subsection (a)(1) of this section to submit a notice to the Administrator before beginning the manufacture or processing of a chemical substance, and (ii) such person is required to submit test data for such substance pursuant to a rule promulgated under section 2603 of this title before the submission of such notice, such person shall submit to the Administrator such data in accordance with such rule at the time notice is submitted in accordance with subsection (a)(1) of this section.

(B) If—

(i) a person is required by subsection (a)(1) of this section to submit a notice to the Administrator, and

(ii) such person has been granted an exemption under section 2603(c) of this title from the requirements of a rule promulgated under section 2603 of this title before the submission of such notice,

such person may not, before the expiration of the 90 day period which begins on the date of the submission in accordance with such rule of the test data the submission or development of which was the basis for the exemption, manufacture such substance if such person is subject to subsection (a)(1)(A) of this section or manufacture or process such substance for a significant new use if the person is subject to subsection (a)(1)(B) of this section.

(2)(A) If a person—

(i) is required by subsection (a)(1) of this section to submit a notice to the Administrator before beginning the manufacture or processing of a chemical substance listed under paragraph (4), and

(ii) is not required by a rule promulgated under section 2603 of this title before the submission of such notice to submit test data for such substance,

such person shall submit to the Administrator data prescribed by subparagraph (B) at the time notice is submitted in accordance with subsection (a)(1) of this section.

(B) Data submitted pursuant to subparagraph (A) shall be data which the person submitting the data believes show that—

(i) in the case of a substance with respect to which notice is required under subsection (a)(1)(A) of this section, the manufacture, processing, distribution in commerce, use, and disposal of the chemical substance or any combination of such activities will not present an unreasonable risk of injury to health or the environment, or

(ii) in the case of a chemical substance with respect to which notice is required under subsection (a)(1)(B) of this section, the intended significant new use of the chemical substance will not present an unreasonable risk of injury to health or the environment.

(3) Data submitted under paragraph (1) or (2) shall be made available, subject to section 2613 of this title, for examination by interested persons.

(4)(A)(i) The Administrator may, by rule, compile and keep current a list of chemical substances with respect to which the Administrator finds that the manufacture, processing, distribution in commerce, use, or disposal, or any combination of such activities, presents or may present an unreasonable risk of injury to health or the environment.

(ii) In making a finding under clause (i) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or any combination of such activities presents or may present an unreasonable risk of injury to health or the environment, the Administrator shall consider all relevant factors, including—

(I) the effects of the chemical substance on health and the magnitude of human exposure to such substance; and

(II) the effects of the chemical substance on the environment and the magnitude of environmental exposure to such substance.

(B) The Administrator shall, in prescribing a rule under subparagraph (A) which lists any chemical substance, identify those uses, if any, which the Administrator determines, by rule under subsection (a)(2) of this section, would constitute a significant new use of such substance.

(C) Any rule under subparagraph (A), and any substantive amendment or repeal of such a rule, shall be promulgated pursuant to the procedures specified in section 553 of title 5, except that (i) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions, (ii) a transcript shall be kept of any oral presentation, and (iii) the Administrator shall make and publish with the rule the finding described in subparagraph (A).

(c) Extension of notice period

The Administrator may for good cause extend for additional periods (not to exceed in the aggregate 90 days) the period, prescribed by subsection (a) or (b) of this section before which the manufacturing or processing of a chemical substance subject to such subsection may begin. Subject to section 2613 of this title, such an extension and the reasons therefor shall be published in the Federal Register and shall constitute a final agency action subject to judicial review.

(d) Content of notice; publications in the Federal Register

(1) The notice required by subsection (a) of this section shall include—

(A) insofar as known to the person submitting the notice or insofar as reasonably ascertainable, the information described in subparagraphs (A), (B), (C), (D), (F), and (G) of section 2607(a)(2) of this title, and

(B) in such form and manner as the Administrator may prescribe, any test data in the possession or control of the person giving such notice which are related to the effect of any manufacture, processing, distribution in commerce, use, or disposal of such substance or any article containing such substance, or of any combination of such activities, on health or the environment, and

(C) a description of any other data concerning the environmental and health effects of such substance, insofar as known to the person making the notice or insofar as reasonably ascertainable.

Such a notice shall be made available, subject to section 2613 of this title, for examination by interested persons.

(2) Subject to section 2613 of this title, not later than five days (excluding Saturdays, Sundays and legal holidays) after the date of the receipt of a notice under subsection (a) of this section or of data under subsection (b) of this section, the Administrator shall publish in the Federal Register a notice which—

(A) identifies the chemical substance for which notice or data has been received;

(B) lists the uses or intended uses of such substance; and

(C) in the case of the receipt of data under subsection (b) of this section, describes the nature of the tests performed on such substance and any data which was developed pursuant to subsection (b) of this section or a rule under section 2603 of this title.

A notice under this paragraph respecting a chemical substance shall identify the chemical substance by generic class unless the Administrator determines that more specific identification is required in the public interest.

(3) At the beginning of each month the Administrator shall publish a list in the Federal Register of (A) each chemical substance for which notice has been received under subsection (a) of this section and for which the notification period prescribed by subsection (a), (b), or (c) of this section has not expired, and (B) each chemical substance for which such notification period has expired since the last publication in the Federal Register of such list.

(e) Regulation pending development of information

(1)(A) If the Administrator determines that—

(i) the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of a chemical substance with respect to which notice is required by subsection (a) of this section; and

(ii)(I) in the absence of sufficient information to permit the Administrator to make such an evaluation, the manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities, may present an unreasonable risk of injury to health or the environment, or

(II) such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance,

the Administrator may issue a proposed order, to take effect on the expiration of the notification period applicable to the manufacturing or processing of such substance under subsection (a), (b), or (c) of this section, to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of such substance or to prohibit or limit any combination of such activities.

(B) A proposed order may not be issued under subparagraph (A) respecting a chemical substance (i) later than 45 days before the expiration of the notification period applicable to the manufacture or processing of such substance under subsection (a), (b), or (c) of this section, and (ii) unless the Administrator has, on or before the issuance of the proposed order, notified, in writing, each manufacturer or processor, as the case may be, of such substance of the determination which underlies such order.

(C) If a manufacturer or processor of a chemical substance to be subject to a proposed order issued under subparagraph (A) files with the Administrator (within the 30-day period beginning on the date such manufacturer or processor received the notice required by subparagraph (B)(ii)) objections specifying with particularity the provisions of the order deemed objectionable and stating the grounds therefor, the proposed order shall not take effect.

(2)(A)(i) Except as provided in clause (ii), if with respect to a chemical substance with respect to which notice is required by subsection (a) of this section, the Administrator makes the determination described in paragraph (1)(A) and if—

(I) the Administrator does not issue a proposed order under paragraph (1) respecting such substance, or

(II) the Administrator issues such an order respecting such substance but such order does not take effect because objections were filed under paragraph (1)(C) with respect to it,

the Administrator, through attorneys of the Environmental Protection Agency, shall apply to the United States District Court for the District of Columbia or the United States district court for the judicial district in which the manufacturer or processor, as the case may be, of such substance is found, resides, or transacts business for an injunction to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of such substance (or to prohibit or limit any combination of such activities).

(ii) If the Administrator issues a proposed order under paragraph (1)(A) respecting a chemical substance but such order does not take effect because objections have been filed under paragraph (1)(C) with respect to it, the Administrator is not required to apply for an injunction under clause (i) respecting such substance if the Administrator determines, on the basis of such objections, that the determinations under paragraph (1)(A) may not be made.

(B) A district court of the United States which receives an application under subparagraph (A)(i) for an injunction respecting a chemical substance shall issue such injunction if the court finds that—

(i) the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of a chemical substance with respect to which notice is required by subsection (a) of this section; and

(ii)(I) in the absence of sufficient information to permit the Administrator to make such an evaluation, the manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities, may present an unreasonable risk of injury to health or the environment, or

(II) such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance.

(C) Pending the completion of a proceeding for the issuance of an injunction under subparagraph (B) respecting a chemical substance, the court may, upon application of the Administrator made through attorneys of the Environmental Protection Agency, issue a temporary restraining order or a preliminary injunction to prohibit the manufacture, processing, distribution in commerce, use, or disposal of such a substance (or any combination of such activities) if the court finds that the notification period applicable under subsection (a), (b), or (c) of this section to the manufacturing or processing of such substance may expire before such proceeding can be completed.

(D) After the submission to the Administrator of test data sufficient to evaluate the health and environmental effects of a chemical substance subject to an injunction issued under subparagraph (B) and the evaluation of such data by the Administrator, the district court of the United States which issued such injunction shall, upon petition dissolve the injunction unless the Administrator has initiated a proceeding for the issuance of a rule under section 2605(a) of this title respecting the substance. If such a proceeding has been initiated, such court shall continue the injunction in effect until the effective date of the rule promulgated in such proceeding or, if such proceeding is terminated without the promulgation of a rule, upon the termination of the proceeding, whichever occurs first.

(f) Protection against unreasonable risks

(1) If the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance with respect to which notice is required by subsection (a) of this section, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or environment before a rule promulgated under section 2605 of this title can protect against such risk, the Administrator shall, before the expiration of the notification period applicable under subsection (a), (b), or (c) of this section to the manufacturing or processing of such substance, take the action authorized by paragraph (2) or (3) to the extent necessary to protect against such risk.

(2) The Administrator may issue a proposed rule under section 2605(a) of this title to apply to a chemical substance with respect to which a finding was made under paragraph (1)—

(A) a requirement limiting the amount of such substance which may be manufactured, processed, or distributed in commerce,

(B) a requirement described in paragraph (2), (3), (4), (5), (6), or (7) of section 2605(a) of this title, or

(C) any combination of the requirements referred to in subparagraph (B).

Such a proposed rule shall be effective upon its publication in the Federal Register. Section 2605(d)(2)(B) of this title shall apply with respect to such rule.

(3)(A) The Administrator may—

(i) issue a proposed order to prohibit the manufacture, processing, or distribution in commerce of a substance with respect to which a finding was made under paragraph (1), or

(ii) apply, through attorneys of the Environmental Protection Agency, to the United States District Court for the District of Columbia or the United States district court for the judicial district in which the manufacturer, or processor, as the case may be, of such substance, is found, resides, or transacts business for an injunction to prohibit the manufacture, processing, or distribution in commerce of such substance.

A proposed order issued under clause (i) respecting a chemical substance shall take effect on the expiration of the notification period applicable under subsection (a), (b), or (c) of this section to the manufacture or processing of such substance.

(B) If the district court of the United States to which an application has been made under subparagraph (A)(ii) finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance with respect to which such application was made, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment before a rule promulgated under section 2605 of this title can protect against such risk, the court shall issue an injunction to prohibit the manufacture, processing, or distribution in commerce of such substance or to prohibit any combination of such activities.

(C) The provisions of subparagraphs (B) and (C) of subsection (e)(1) of this section shall apply with respect to an order issued under clause (i) of subparagraph (A); and the provisions of subparagraph (C) of subsection (e)(2) of this section shall apply with respect to an injunction issued under subparagraph (B).

(D) If the Administrator issues an order pursuant to subparagraph (A)(i) respecting a chemical substance and objections are filed in accordance with subsection (e)(1)(C) of this section, the Administrator shall seek an injunction under subparagraph (A)(ii) respecting such substance unless the Administrator determines, on the basis of such objections, that such substance does not or will not present an unreasonable risk of injury to health or the environment.

(g) Statement of reasons for not taking action

If the Administrator has not initiated any action under this section or section 2605 or 2606 of this title to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance, with respect to which notification or data is required by subsection (a)(1)(B) or (b) of this section, before the expiration of the notification period applicable to the manufacturing or processing of such substance, the Administrator shall publish a statement of the Administrator's reasons for not initiating such action. Such a statement shall be published in the Federal Register before the expiration of such period. Publication of such statement in accordance with the preceding sentence is not a prerequisite to the manufacturing or processing of the substance with respect to which the statement is to be published.

(h) Exemptions

(1) The Administrator may, upon application, exempt any person from any requirement of subsection (a) or (b) of this section to permit such person to manufacture or process a chemical substance for test marketing purposes—

(A) upon a showing by such person satisfactory to the Administrator that the manufacture, processing, distribution in commerce, use, and disposal of such substance, and that any combination of such activities, for such purposes will not present any unreasonable risk of injury to health or the environment, and

(B) under such restrictions as the Administrator considers appropriate.

(2)(A) The Administrator may, upon application, exempt any person from the requirement of subsection (b)(2) of this section to submit data for a chemical substance. If, upon receipt of an application under the preceding sentence, the Administrator determines that—

(i) the chemical substance with respect to which such application was submitted is equivalent to a chemical substance for which data has been submitted to the Administrator as required by subsection (b)(2) of this section, and

(ii) submission of data by the applicant on such substance would be duplicative of data which has been submitted to the Administrator in accordance with such subsection,

the Administrator shall exempt the applicant from the requirement to submit such data on such substance. No exemption which is granted under this subparagraph with respect to the submission of data for a chemical substance may take effect before the beginning of the reimbursement period applicable to such data.

(B) If the Administrator exempts any person, under subparagraph (A), from submitting data required under subsection (b)(2) of this section for a chemical substance because of the existence of previously submitted data and if such exemption is granted during the reimbursement period for such data, then (unless such person and the persons referred to in clauses (i) and (ii) agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount determined under rules of the Administrator)—

(i) to the person who previously submitted the data on which the exemption was based, for a portion of the costs incurred by such person in complying with the requirement under subsection (b)(2) of this section to submit such data, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to such costs, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance, the Administrator shall, after consultation with the Attorney General and the Federal Trade Commission, consider all relevant factors, including the effect on the competitive position of the person required to provide reimbursement in relation to the persons to be reimbursed and the share of the market for such substance of the person required to provide reimbursement in relation to the share of such market of the persons to be reimbursed. For purposes of judicial review, an order under this subparagraph shall be considered final agency action.

(C) For purposes of this paragraph, the reimbursement period for any previously submitted data for a chemical substance is a period—

(i) beginning on the date of the termination of the prohibition, imposed under this section, on the manufacture or processing of such substance by the person who submitted such data to the Administrator, and

(ii) ending—

(I) five years after the date referred to in clause (i), or

(II) at the expiration of a period which begins on the date referred to in clause (i) and is equal to the period which the Administrator determines was necessary to develop such data,

whichever is later.

(3) The requirements of subsections (a) and (b) of this section do not apply with respect to the manufacturing or processing of any chemical substance which is manufactured or processed, or proposed to be manufactured or processed, only in small quantities (as defined by the Administrator by rule) solely for purposes of—

(A) scientific experimentation or analysis, or

(B) chemical research on, or analysis of such substance or another substance, including such research or analysis for the development of a product,

if all persons engaged in such experimentation, research, or analysis for a manufacturer or processor are notified (in such form and manner as the Administrator may prescribe) of any risk to health which the manufacturer, processor, or the Administrator has reason to believe may be associated with such chemical substance.

(4) The Administrator may, upon application and by rule, exempt the manufacturer of any new chemical substance from all or part of the requirements of this section if the Administrator determines that the manufacture, processing, distribution in commerce, use, or disposal of such chemical substance, or that any combination of such activities, will not present an unreasonable risk of injury to health or the environment. A rule promulgated under this paragraph (and any substantive amendment to, or repeal of, such a rule) shall be promulgated in accordance with paragraphs (2) and (3) of section 2605(c) of this title.

(5) The Administrator may, upon application, make the requirements of subsections (a) and (b) of this section inapplicable with respect to the manufacturing or processing of any chemical substance (A) which exists temporarily as a result of a chemical reaction in the manufacturing or processing of a mixture or another chemical substance, and (B) to which there is no, and will not be, human or environmental exposure.

(6) Immediately upon receipt of an application under paragraph (1) or (5) the Administrator shall publish in the Federal Register notice of the receipt of such application. The Administrator shall give interested persons an opportunity to comment upon any such application and shall, within 45 days of its receipt, either approve or deny the application. The Administrator shall publish in the Federal Register notice of the approval or denial of such an application.

(i) Definitions

For purposes of this section, the terms "manufacture" and "process" mean manufacturing or processing for commercial purposes.

(Pub. L. 94-469, § 5, Oct. 11, 1976, 90 Stat. 2012.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2603, 2606, 2607, 2611 to 2613, 2614, 2616 to 2620, 2623, 2625, 2630 of this title.

§ 2605. Regulation of hazardous chemical substances and mixtures

(a) Scope of regulation

If the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment, the Administrator shall by rule apply one or more of the following requirements to such substance or mixture to the extent necessary to protect adequately against such risk using the least burdensome requirements:

(1) A requirement (A) prohibiting the manufacturing, processing, or distribution in commerce of such substance or mixture, or (B) limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce.

(2) A requirement—

(A) prohibiting the manufacture, processing, or distribution in commerce of such substance or mixture for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement, or

(B) limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement.

(3) A requirement that such substance or mixture or any article containing such substance or mixture be marked with or accompanied by clear and adequate warnings and instructions with respect to its use, distribution in commerce, or disposal or with respect to any combination of such activities. The form and content of such warnings and instructions shall be prescribed by the Administrator.

(4) A requirement that manufacturers and processors of such substance or mixture make and retain records of the processes used to manufacture or process such substance or mixture and monitor or conduct tests which are reasonable and necessary to assure compliance with the requirements of any rule applicable under this subsection.

(5) A requirement prohibiting or otherwise regulating any manner or method of commercial use of such substance or mixture.

(6)(A) A requirement prohibiting or otherwise regulating any manner or method of disposal of such substance or mixture, or of any article containing such substance or mixture, by its manufacturer or processor or by any other person who uses, or disposes of, it for commercial purposes.

(B) A requirement under subparagraph (A) may not require any person to take any action which would be in violation of any law or requirement of, or in effect for, a State or political subdivision, and shall require each person subject to it to notify each State and political subdivision in which a required disposal may occur of such disposal.

(7) A requirement directing manufacturers or processors of such substance or mixture (A) to give notice of such unreasonable risk of injury to distributors in commerce of such substance or mixture and, to the extent reasonably ascertainable, to other persons in possession of such substance or mixture or exposed to such substance or mixture, (B) to give public notice of such risk of injury, and (C) to replace or repurchase such substance or mixture as elected by the person to which the requirement is directed.

Any requirement (or combination of requirements) imposed under this subsection may be limited in application to specified geographic areas.

(b) Quality control

If the Administrator has a reasonable basis to conclude that a particular manufacturer or processor is manufacturing or processing a chemical substance or mixture in a manner which unintentionally causes the chemical substance or mixture to present or which will cause it to present an unreasonable risk of injury to health or the environment—

(1) the Administrator may by order require such manufacturer or processor to submit a description of the relevant quality control procedures followed in the manufacturing or processing of such chemical substance or mixture; and

(2) if the Administrator determines—

(A) that such quality control procedures are inadequate to prevent the chemical substance or mixture from presenting such risk of injury, the Administrator may order the manufacturer or processor to revise such quality control procedures to the extent necessary to remedy such inadequacy; or

(B) that the use of such quality control procedures has resulted in the distribution in commerce of chemical substances or mixtures which present an unreasonable risk of injury to health or the environment, the Administrator may order the manufacturer or processor to (i) give notice of such risk to processors or distributors in commerce of any such substance or mixture, or to both, and, to the extent reasonably ascertainable, to any other person in possession of or exposed to any such substance, (ii) to give public notice of such risk, and (iii) to provide such replacement or repurchase of any such substance or mixture as is necessary to adequately protect health or the environment.

A determination under subparagraph (A) or (B) of paragraph (2) shall be made on the record after opportunity for hearing in accordance with section 554 of title 5. Any manufacturer or processor subject to a requirement to replace or repurchase a chemical substance or mixture may elect either to replace or repurchase the substance or mixture and shall take either such action in the manner prescribed by the Administrator.

(c) Promulgation of subsection (a) rules

(1) In promulgating any rule under subsection (a) of this section with respect to a chemical substance or mixture, the Administrator shall consider and publish a statement with respect to—

(A) the effects of such substance or mixture on health and the magnitude of the exposure of human beings to such substance or mixture,

(B) the effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture,

(C) the benefits of such substance or mixture for various uses and the availability of substitutes for such uses, and

(D) the reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

If the Administrator determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another Federal law (or laws) administered in whole or in part by the Administrator, the Administrator may not promulgate a rule under subsection (a) of this section to protect against such risk of injury unless the Administrator finds, in the Administrator's discretion, that it is in the public interest to protect against such risk under this chapter. In making such a finding the Administrator shall consider (i) all relevant aspects of the risk, as determined by the Administrator in the Administrator's discretion, (ii) a comparison of the estimated costs of complying with actions taken under this chapter and under such law (or laws), and (iii) the relative efficiency of actions under this chapter and under such law (or laws) to protect against such risk of injury.

(2) When prescribing a rule under subsection (a) the Administrator shall proceed in accordance with section 553 of title 5 (without regard to any reference in such section to sections 556 and 557 of such title), and shall also (A) publish a notice of proposed rulemaking stating with particularity the reason for the proposed rule; (B) allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available; (C) provide an opportunity for an informal hearing in accordance with paragraph (3); (D) promulgate, if appropriate, a final rule based on the matter in the rulemaking record (as defined in section 2618(a) of this title), and (E) make and publish with the rule the finding described in subsection (a) of this section.

(3) Informal hearings required by paragraph (2)(C) shall be conducted by the Administrator in accordance with the following requirements:

(A) Subject to subparagraph (B), an interested person is entitled—

(i) to present such person's position orally or by documentary submissions (or both), and

(ii) if the Administrator determines that there are disputed issues of material fact it is necessary to resolve, to present such rebuttal submissions and to conduct (or have conducted under subparagraph (B)(ii)) such cross-examination of persons as the Administrator determines (I) to be appropriate, and (II) to be required for a full and true disclosure with respect to such issues.

(B) The Administrator may prescribe such rules and make such rulings concerning procedures in such hearings to avoid unnecessary costs or delay. Such rules or rulings may include (i) the imposition of reasonable time limits on each interested person's oral presentations, and (ii) requirements that any cross-examination to which a person may be entitled under subparagraph (A) be conducted by the Administrator on behalf of that person in such manner as the Administrator determines (I) to be appropriate, and (II) to be required for a full and true disclosure with respect to disputed issues of material fact.

(C)(i) Except as provided in clause (ii), if a group of persons each of whom under subparagraphs (A) and (B) would be entitled to conduct (or have conducted) cross-examination and who are determined by the Administrator to have the same or similar interests in the proceeding cannot agree upon a single representative of such interests for purposes of cross-examination, the Administrator may make rules and rulings (I) limiting the representation of such interest for such purposes, and (II) governing the manner in which such cross-examination shall be limited.

(ii) When any person who is a member of a group with respect to which the Administrator has made a determination under clause (i) is unable to agree upon group representation with the other members of the group, then such person shall not be denied under the authority of clause (i) the opportunity to conduct (or have conducted) cross-examination as to issues affecting the person's particular interests if (I) the person satisfies the Administrator that the person has made a reasonable and good faith effort to reach agreement upon group representation with the other members of the group and (II) the Administrator determines that there are substantial and relevant issues which are not adequately presented by the group representative.

(D) A verbatim transcript shall be taken of any oral presentation made, and cross-examination conducted in any informal hearing under this subsection. Such transcript shall be available to the public.

(4)(A) The Administrator may, pursuant to rules prescribed by the Administrator, provide compensation for reasonable attorneys' fees, expert witness fees, and other costs of participating in a rulemaking proceeding for the promulgation of a rule under subsection (a) of this section to any person—

(i) who represents an interest which would substantially contribute to a fair determination of the issues to be resolved in the proceeding, and

(ii) if—

(I) the economic interest of such person is small in comparison to the costs of effective participation in the proceeding by such person, or

(II) such person demonstrates to the satisfaction of the Administrator that such person does not have sufficient resources adequately to participate in the proceeding without compensation under this subparagraph.

In determining for purposes of clause (i) if an interest will substantially contribute to a fair determination of the issues to be resolved in a proceeding, the Administrator shall take into account the number and complexity of such issues and the extent to which representation of such interest will contribute to widespread public participation in the proceeding and representation of a fair balance of interests for the resolution of such issues.

(B) In determining whether compensation should be provided to a person under subparagraph (A) and the amount of such compensation, the Administrator shall take into account the financial burden which will be incurred by such person in participating in the rulemaking proceeding. The Administrator shall take such action as may be necessary to ensure that the aggregate amount of compensation paid under this paragraph in any fiscal year to all persons who, in rulemaking proceedings in which they receive compensation, are persons who either—

(i) would be regulated by the proposed rule, or

(ii) represent persons who would be so regulated,

may not exceed 25 per centum of the aggregate amount paid as compensation under this paragraph to all persons in such fiscal year.

(5) Paragraph (1), (2), (3), and (4) of this subsection apply to the promulgation of a rule repealing, or making a substantive amendment to, a rule promulgated under subsection (a) of this section.

(d) Effective date

(1) The Administrator shall specify in any rule under subsection (a) of this section the date on which it shall take effect, which date shall be as soon as feasible.

(2)(A) The Administrator may declare a proposed rule under subsection (a) of this section to be effective upon its publication in the Federal Register and until the effective date of final action taken, in accordance with subparagraph (B), respecting such rule if—

(i) the Administrator determines that—

(I) the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture subject to such proposed rule or any combination of such activities is likely to result in an unreasonable risk of serious or widespread injury to health or the environment before such effective date; and

(II) making such proposed rule so effective is necessary to protect the public interest; and

(ii) in the case of a proposed rule to prohibit the manufacture, processing, or distribution of a chemical substance or mixture because of the risk determined under clause (i)(I), a court has in an action under section 2606 of this title granted relief with respect to such risk associated with such substance or mixture.

Such a proposed rule which is made so effective shall not, for purposes of judicial review, be considered final agency action.

(B) If the Administrator makes a proposed rule effective upon its publication in the Federal Register, the Administrator shall, as expeditiously as possible, give interested persons prompt notice of such action, provide reasonable opportunity, in accordance with paragraphs (2) and (3) of subsection (c) of this section, for a hearing on such rule, and either promulgate such rule (as proposed or with modifications) or revoke it; and if such a hearing is requested, the Administrator shall commence the hearing within five days from the date such request is made unless the Administrator and the person making the request agree upon a later date for the hearing to begin, and after the hearing is concluded the Administrator shall, within ten days of the conclusion of the hearing, either promulgate such rule (as proposed or with modifications) or revoke it.

(e) Polychlorinated biphenyls

(1) Within six months after January 1, 1977, the Administrator shall promulgate rules to—

(A) prescribe methods for the disposal of polychlorinated biphenyls, and

(B) require polychlorinated biphenyls to be marked with clear and adequate warnings, and instructions with respect to their processing, distribution in commerce, use, or disposal or with respect to any combination of such activities.

Requirements prescribed by rules under this paragraph shall be consistent with the requirements of paragraphs (2) and (3).

(2)(A) Except as provided under subparagraph (B), effective one year after January 1, 1977, no person may manufacture, process, or distribute in commerce or use any polychlorinated biphenyl in any manner other than in a totally enclosed manner.

(B) The Administrator may by rule authorize the manufacture, processing, distribution in commerce or use (or any combination of such activities) of any polychlorinated biphenyl in a manner other than in a totally enclosed manner if the Administrator finds that such manufacture, processing, distribution in commerce, or use (or combination of such activities) will not present an unreasonable risk of injury to health or the environment.

(C) For the purposes of this paragraph, the term "totally enclosed manner" means any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator by rule.

(3)(A) Except as provided in subparagraphs (B) and (C)—

(i) no person may manufacture any polychlorinated biphenyl after two years after January 1, 1977, and

(ii) no person may process or distribute in commerce any polychlorinated biphenyl after two and one-half years after such date.

(B) Any person may petition the Administrator for an exemption from the requirements of subparagraph (A), and the Administrator may grant by rule such an exemption if the Administrator finds that—

(i) an unreasonable risk of injury to health or environment would not result, and

(ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl.

An exemption granted under this subparagraph shall be subject to such terms and conditions as the Administrator may prescribe and shall be in effect for such period (but not more than one year from the date it is granted) as the Administrator may prescribe.

(C) Subparagraph (A) shall not apply to the distribution in commerce of any polychlorinated biphenyl if such polychlorinated biphenyl was sold for purposes other than resale before two and one half years after October 11, 1976.

(4) Any rule under paragraph (1), (2)(B), or (3)(B) shall be promulgated in accordance with paragraphs (2), (3), and (4) of subsection (c) of this section.

(5) This subsection does not limit the authority of the Administrator, under any other provision of this chapter or any other Federal law,

to take action respecting any polychlorinated biphenyl.

(Pub. L. 94-469, § 6, Oct. 11, 1976, 90 Stat. 2020.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2603, 2604, 2606 to 2608, 2611, 2612, 2614, 2616 to 2620, 2623, 2630 of this title.

§ 2606. Imminent hazards

(a) Actions authorized and required

(1) The Administrator may commence a civil action in an appropriate district court of the United States—

(A) for seizure of an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture,

(B) for relief (as authorized by subsection (b) of this section) against any person who manufactures, processes, distributes in commerce, or uses, or disposes of, an imminently hazardous chemical substance or mixture or any article containing such a substance or mixture, or

(C) for both such seizure and relief.

A civil action may be commenced under this paragraph notwithstanding the existence of a rule under section 2603, 2604, or 2605 of this title or an order under section 2604 of this title, and notwithstanding the pendency of any administrative or judicial proceeding under any provision of this chapter.

(2) If the Administrator has not made a rule under section 2605(a) of this title immediately effective (as authorized by section 2605(d)(2)(A)(i) of this title) with respect to an imminently hazardous chemical substance or mixture, the Administrator shall commence in a district court of the United States with respect to such substance or mixture or article containing such substance or mixture a civil action described in subparagraph (A), (B), or (C) of paragraph (1).

(b) Relief authorized

(1) The district court of the United States in which an action under subsection (a) of this section is brought shall have jurisdiction to grant such temporary or permanent relief as may be necessary to protect health or the environment from the unreasonable risk associated with the chemical substance, mixture, or article involved in such action.

(2) In the case of an action under subsection (a) of this section brought against a person who manufactures, processes, or distributes in commerce a chemical substance or mixture or an article containing a chemical substance or mixture, the relief authorized by paragraph (1) may include the issuance of a mandatory order requiring (A) in the case of purchasers of such substance, mixture, or article known to the defendant, notification to such purchasers of the risk associated with it; (B) public notice of such risk; (C) recall; (D) the replacement or repurchase of such substance, mixture, or article; or (E) any combination of the actions described in the preceding clauses.

(3) In the case of an action under subsection (a) of this section against a chemical substance, mixture, or article, such substance, mixture, or article may be proceeded against by process of libel for its seizure and condemnation. Proceedings in such an action shall conform as nearly as possible to proceedings in rem in admiralty.

(c) Venue and consolidation

(1)(A) An action under subsection (a) of this section against a person who manufactures, processes, or distributes a chemical substance or mixture or an article containing a chemical substance or mixture may be brought in the United States District Court for the District of Columbia, or for any judicial district in which any of the defendants is found, resides, or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. An action under subsection (a) of this section against a chemical substance, mixture, or article may be brought in any United States district court within the jurisdiction of which the substance, mixture, or article is found.

(B) In determining the judicial district in which an action may be brought under subsection (a) of this section in instances in which such action may be brought in more than one judicial district, the Administrator shall take into account the convenience of the parties.

(C) Subpeonas requiring attendance of witnesses in an action brought under subsection (a) of this section may be served in any judicial district.

(2) Whenever proceedings under subsection (a) of this section involving identical chemical substances, mixtures, or articles are pending in courts in two or more judicial districts, they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest, upon notice to all parties in interest.

(d) Action under section 2605

Where appropriate, concurrently with the filing of an action under subsection (a) of this section or as soon thereafter as may be practicable, the Administrator shall initiate a proceeding for the promulgation of a rule under section 2605(a) of this title.

(e) Representation

Notwithstanding any other provision of law, in any action under subsection (a) of this section, the Administrator may direct attorneys of the Environmental Protection Agency to appear and represent the Administrator in such an action.

(f) Definition

For the purposes of subsection (a) of this section, the term "imminently hazardous chemical substance or mixture" means a chemical substance or mixture which presents an imminent and unreasonable risk of serious or widespread injury to health or the environment. Such a risk to health or the environment shall be considered imminent if it is shown that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture, or that any combination of such activities, is likely to result in such injury to health or the environment before a final rule under section 2605 of this title can protect against such risk.

(Pub. L. 94-469, § 7, Oct. 11, 1976, 90 Stat. 2026.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2603 to 2605, 2607, 2608, 2611, 2612, 2614, 2619 of this title.

§ 2607. Reporting and retention of information

(a) Reports

(1) The Administrator shall promulgate rules under which—

(A) each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process a chemical substance (other than a chemical substance described in subparagraph (B)(ii)) shall maintain such records, and shall submit to the Administrator such reports, as the Administrator may reasonably require, and

(B) each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process—

(i) a mixture, or

(ii) a chemical substance in small quantities (as defined by the Administrator by rule) solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including any such research or analysis for the development of a product,

shall maintain records and submit to the Administrator reports but only to the extent the Administrator determines the maintenance of records or submission of reports, or both, is necessary for the effective enforcement of this chapter.

The Administrator may not require in a rule promulgated under this paragraph the maintenance of records or the submission of reports with respect to changes in the proportions of the components of a mixture unless the Administrator finds that the maintenance of such records or the submission of such reports, or both, is necessary for the effective enforcement of this chapter. For purposes of the compilation of the list of chemical substances required under subsection (b) of this section, the Administrator shall promulgate rules pursuant to this subsection not later than 180 days after January 1, 1977.

(2) The Administrator may require under paragraph (1) maintenance of records and reporting with respect to the following insofar as known to the person making the report or insofar as reasonably ascertainable:

(A) The common or trade name, the chemical identity, and the molecular structure of each chemical substance or mixture for which such a report is required.

(B) The categories or proposed categories of use of each such substance or mixture.

(C) The total amount of each such substance and mixture manufactured or processed, reasonable estimates of the total amount to be manufactured or processed, the amount manufactured or processed for each of its categories of use, and reasonable estimates of the amount to be manufactured or processed for each of its categories of use or proposed categories of use.

(D) A description of the byproducts resulting from the manufacture, processing, use, or disposal of each such substance or mixture.

(E) All existing data concerning the environmental and health effects of such substance or mixture.

(F) The number of individuals exposed, and reasonable estimates of the number who will be exposed, to such substance or mixture in their places of employment and the duration of such exposure.

(G) In the initial report under paragraph (1) on such substance or mixture, the manner or method of its disposal, and in any subsequent report on such substance or mixture, any change in such manner or method.

To the extent feasible, the Administrator shall not require under paragraph (1), any reporting which is unnecessary or duplicative.

(3)(A)(i) The Administrator may by rule require a small manufacturer or processor of a chemical substance to submit to the Administrator such information respecting the chemical substance as the Administrator may require for publication of the first list of chemical substances required by subsection (b) of this section.

(ii) The Administrator may by rule require a small manufacturer or processor of a chemical substance or mixture—

(I) subject to a rule proposed or promulgated under section 2603, 2604(b)(4), or 2605 of this title, or an order in effect under section 2604(e) of this title, or

(II) with respect to which relief has been granted pursuant to a civil action brought under section 2604 or 2606 of this title,

to maintain such records on such substance or mixture, and to submit to the Administrator such reports on such substance or mixture, as the Administrator may reasonably require. A rule under this clause requiring reporting may require reporting with respect to the matters referred to in paragraph (2).

(B) The Administrator, after consultation with the Administrator of the Small Business Administration, shall by rule prescribe standards for determining the manufacturers and processors which qualify as small manufacturers and processors for purposes of this paragraph and paragraph (1).

(b) Inventory

(1) The Administrator shall compile, keep current, and publish a list of each chemical substance which is manufactured or processed in the United States. Such list shall at least include each chemical substance which any person reports, under section 2604 of this title or subsection (a) of this section, is manufactured or processed in the United States. Such list may not include any chemical substance which was not manufactured or processed in the United States within three years before the effective date of the rules promulgated pursuant to the last sentence of subsection (a)(1) of this section. In the case of a chemical substance for which a notice is submitted in accordance with section 2604 of this title, such chemical substance shall be included in such list as of the earliest date (as determined by the Administrator) on which such substance was manufac-

tured or processed in the United States. The Administrator shall first publish such a list not later than 315 days after January 1, 1977. The Administrator shall not include in such list any chemical substance which is manufactured or processed only in small quantities (as defined by the Administrator by rule) solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including such research or analysis for the development of a product.

(2) To the extent consistent with the purposes of this chapter, the Administrator may, in lieu of listing, pursuant to paragraph (1), a chemical substance individually, list a category of chemical substances in which such substance is included.

(c) Records

Any person who manufactures, processes, or distributes in commerce any chemical substance or mixture shall maintain records of significant adverse reactions to health or the environment, as determined by the Administrator by rule, alleged to have been caused by the substance or mixture. Records of such adverse reactions to the health of employees shall be retained for a period of 30 years from the date such reactions were first reported to or known by the person maintaining such records. Any other record of such adverse reactions shall be retained for a period of five years from the date the information contained in the record was first reported to or known by the person maintaining the record. Records required to be maintained under this subsection shall include records of consumer allegations of personal injury or harm to health, reports of occupational disease or injury, and reports or complaints of injury to the environment submitted to the manufacturer, processor, or distributor in commerce from any source. Upon request of any duly designated representative of the Administrator, each person who is required to maintain records under this subsection shall permit the inspection of such records and shall submit copies of such records.

(d) Health and safety studies

The Administrator shall promulgate rules under which the Administrator shall require any person who manufactures, processes, or distributes in commerce or who proposes to manufacture, process, or distribute in commerce any chemical substance or mixture (or with respect to paragraph (2), any person who has possession of a study) to submit to the Administrator—

(1) lists of health and safety studies (A) conducted or initiated by or for such person with respect to such substance or mixture at any time, (B) known to such person, or (C) reasonably ascertainable by such person, except that the Administrator may exclude certain types or categories of studies from the requirements of this subsection if the Administrator finds that submission of lists of such studies are unnecessary to carry out the purposes of this chapter; and

(2) copies of any study contained on a list submitted pursuant to paragraph (1) or otherwise known by such person.

(e) Notice to Administrator of substantial risks

Any person who manufactures, processes, or distributes in commerce as chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information.

(f) Definitions

For purposes of this section, the terms "manufacture" and "process" mean manufacture or process for commercial purposes.

(Pub. L. 94-469, § 8, Oct. 11, 1976, 90 Stat. 2027.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2602, 2604, 2611, 2618, 2620 of this title.

§ 2608. Relationship to other Federal laws

(a) Laws not administered by the Administrator

(1) If the Administrator has reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment and determines, in the Administrator's discretion, that such risk may be prevented or reduced to a sufficient extent by action taken under a Federal law not administered by the Administrator, the Administrator shall submit to the agency which administers such law a report which describes such risk and includes in such description a specification of the activity or combination of activities which the Administrator has reason to believe so presents such risk. Such report shall also request such agency—

(A)(i) to determine if the risk described in such report may be prevented or reduced to a sufficient extent by action taken under such law, and

(ii) if the agency determines that such risk may be so prevented or reduced, to issue an order declaring whether or not the activity or combination of activities specified in the description of such risk presents such risk; and

(B) to respond to the Administrator with respect to the matters described in subparagraph (A).

Any report of the Administrator shall include a detailed statement of the information on which it is based and shall be published in the Federal Register. The agency receiving a request under such a report shall make the requested determination, issue the requested order, and make the requested response within such time as the Administrator specifies in the request, but such time specified may not be less than 90 days from the date the request was made. The response of an agency shall be accompanied by a detailed statement of the findings and conclusions of the agency and shall be published in the Federal Register.

(2) If the Administrator makes a report under paragraph (1) with respect to a chemical substance or mixture and the agency to which such report was made either—

(A) issues an order declaring that the activity or combination of activities specified in the description of the risk described in the report does not present the risk described in the report, or

(B) initiates, within 90 days of the publication in the Federal Register of the response of the agency under paragraph (1), action under the law (or laws) administered by such agency to protect against such risk associated with such activity or combination of activities,

the Administrator may not take any action under section 2605 or 2606 of this title with respect to such risk.

(3) If the Administrator has initiated action under section 2605 or 2606 of this title with respect to a risk associated with a chemical substance or mixture which was the subject of a report made to an agency under paragraph (1), such agency shall before taking action under the law (or laws) administered by it to protect against such risk consult with the Administrator for the purpose of avoiding duplication of Federal action against such risk.

(b) Laws administered by the Administrator

The Administrator shall coordinate actions taken under this chapter with actions taken under other Federal laws administered in whole or in part by the Administrator. If the Administrator determines that a risk to health or the environment associated with a chemical substance or mixture could be eliminated or reduced to a sufficient extent by actions taken under the authorities contained in such other Federal laws, the Administrator shall use such authorities to protect against such risk unless the Administrator determines, in the Administrator's discretion, that it is in the public interest to protect against such risk by actions taken under this chapter. This subsection shall not be construed to relieve the Administrator of any requirement imposed on the Administrator by such other Federal laws.

(c) Occupational safety and health

In exercising any authority under this chapter, the Administrator shall not, for purposes of section 653(b)(1) of title 29, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

(d) Coordination

In administering this chapter, the Administrator shall consult and coordinate with the Secretary of Health, Education, and Welfare and the heads of any other appropriate Federal executive department or agency, any relevant independent regulatory agency, and any other appropriate instrumentality of the Federal Government for the purpose of achieving the maximum enforcement of this chapter while imposing the least burdens of duplicative requirements on those subject to the chapter and for other purposes. The Administrator shall, in the report required by section 2629 of this title, report annually to the Congress on actions taken to coordinate with such other Federal departments, agencies, or instrumentalities, and on actions taken to coordinate the authority under this chapter with the authority granted under other Acts referred to in subsection (b) of this section.

(Pub. L. 94-469, § 9, Oct. 11, 1976, 90 Stat. 2030.)

§ 2609. Research, development, collection, dissemination, and utilization of data

(a) Authority

The Administrator shall, in consultation and cooperation with the Secretary of Health, Education, and Welfare and with other heads of appropriate departments and agencies, conduct such research, development, and monitoring as is necessary to carry out the purposes of this chapter. The Administrator may enter into contracts and may make grants for research, development, and monitoring under this subsection. Contracts may be entered into under this subsection without regard to section 529 of title 31 and section 5 of title 41.

(b) Data systems

(1) The Administrator shall establish, administer, and be responsible for the continuing activities of an interagency committee which shall design, establish, and coordinate an efficient and effective system, within the Environmental Protection Agency, for the collection, dissemination to other Federal departments and agencies, and use of data submitted to the Administrator under this chapter.

(2)(A) The Administrator shall, in consultation and cooperation with the Secretary of Health, Education, and Welfare and other heads of appropriate departments and agencies design, establish, and coordinate an efficient and effective system for the retrieval of toxicological and other scientific data which could be useful to the Administrator in carrying out the purposes of this chapter. Systematized retrieval shall be developed for use by all Federal and other departments and agencies with responsibilities in the area of regulation or study of chemical substances and mixtures and their effect on health or the environment.

(B) The Administrator, in consultation and cooperation with the Secretary of Health, Education, and Welfare, may make grants and enter into contracts for the development of a data retrieval system described in subparagraph (A). Contracts may be entered into under this subparagraph without regard to section 529 of title 31 and section 5 of title 41.

(c) Screening techniques

The Administrator shall coordinate, with the Assistant Secretary for Health of the Department of Health, Education, and Welfare, research undertaken by the Administrator and directed toward the development of rapid, reliable, and economical screening techniques for carcinogenic, mutagenic, teratogenic, and ecological effects of chemical substances and mixtures.

(d) Monitoring

The Administrator shall, in consultation and cooperation with the Secretary of Health, Education, and Welfare, establish and be responsible for research aimed at the development, in cooperation with local, State, and Federal agencies, of monitoring techniques and instruments which may be used in the detection of toxic chemical substances and mixtures and which are reliable, economical, and capable of being implemented under a wide variety of conditions.

(e) Basic research

The Administrator shall, in consultation and cooperation with the Secretary of Health, Education, and Welfare, establish research programs to develop the fundamental scientific basis of the screening and monitoring techniques described in subsections (c) and (d) of this section, the bounds of the reliability of such techniques, and the opportunities for their improvement.

(f) Training

The Administrator shall establish and promote programs and workshops to train or facilitate the training of Federal laboratory and technical personnel in existing or newly developed screening and monitoring techniques.

(g) Exchange of research and development results

The Administrator shall, in consultation with the Secretary of Health, Education, and Welfare and other heads of appropriate departments and agencies, establish and coordinate a system for exchange among Federal, State, and local authorities of research and development results respecting toxic chemical substances and mixtures, including a system to facilitate and promote the development of standard data format and analysis and consistent testing procedures.

(Pub. L. 94-469, § 10, Oct. 11, 1976, 90 Stat. 2031.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2628 of this title.

§ 2610. Inspections and subpoenas

(a) In general

For purposes of administering this chapter, the Administrator, and any duly designated representative of the Administrator, may inspect any establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce and any conveyance being used to transport chemical substances, mixtures, or such articles in connection with distribution in commerce. Such an inspection may only be made upon the presentation of appropriate credentials and of a written notice to the owner, operator, or agent in charge of the premises or conveyance to be inspected. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness and shall be conducted at reasonable times, within reasonable limits, and in a reasonable manner.

(b) Scope

(1) Except as provided in paragraph (2), an inspection conducted under subsection (a) of this section shall extend to all things within the premises or conveyance inspected (including records, files, papers, processes, controls, and facilities) bearing on whether the requirements of this chapter applicable to the chemical substances or mixtures within such premises or conveyance have been complied with.

(2) No inspection under subsection (a) of this section shall extend to—

(A) financial data,

(B) sales data (other than shipment data),

(C) pricing data,

(D) personnel data, or

(E) research data (other than data required by this chapter or under a rule promulgated thereunder),

unless the nature and extent of such data are described with reasonable specificity in the written notice required by subsection (a) of this section for such inspection.

(c) Subpoenas

In carrying out this chapter, the Administrator may by subpoena require the attendance and testimony of witnesses and the production of reports, papers, documents, answers to questions, and other information that the Administrator deems necessary. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In the event of contumacy, failure, or refusal of any person to obey any such subpoena, any district court of the United States in which venue is proper shall have jurisdiction to order any such person to comply with such subpoena. Any failure to obey such an order of the court is punishable by the court as a contempt thereof.

(Pub. L. 94-469, § 11, Oct. 11, 1976, 90 Stat. 2032.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2614 of this title.

§ 2611. Exports

(a) In general

(1) Except as provided in paragraph (2) and subsection (b) of this section, this chapter (other than section 2607 of this title) shall not apply to any chemical substance, mixture, or to an article containing a chemical substance or mixture, if—

(A) it can be shown that such substance, mixture, or article is being manufactured, processed, or distributed in commerce for export from the United States, unless such substance, mixture, or article was, in fact, manufactured, processed, or distributed in commerce, for use in the United States, and

(B) such substance, mixture, or article (when distributed in commerce), or any container in which it is enclosed (when so distributed), bears a stamp or label stating that such substance, mixture, or article is intended for export.

(2) Paragraph (1) shall not apply to any chemical substance, mixture, or article if the Administrator finds that the substance, mixture, or article will present an unreasonable risk of injury to health within the United States or to the environment of the United States. The Administrator may require, under section 2603 of this title, testing of any chemical substance or mixture exempted from this chapter by paragraph (1) for the purpose of determining whether or not such substance or

mixture presents an unrasonable risk of injury to health within the United States or to the environment of the United States.

(b) Notice

(1) If any person exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under section 2603 or 2604(b) of this title, such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of the availability of the data submitted to the Administrator under such section for such substance or mixture.

(2) If any person exports or intends to export to a foreign country a chemical substance or mixture for which an order has been issued under section 2604 of this title or a rule has been proposed or promulgated under section 2604 or 2605 of this title, or with respect to which an action is pending, or relief has been granted under section 2604 or 2606 of this title, such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of such rule, order, action, or relief.

(Pub. L. 94-469, § 12, Oct. 11, 1976, 90 Stat. 2033.)

§ 2612. Entry into customs territory of the United States

(a) In general

(1) The Secretary of the Treasury shall refuse entry into the customs territory of the United States (as defined in general headnote 2 to the Tariff Schedules of the United States) of any chemical substance, mixture, or article containing a chemical substance or mixture offered for such entry if—

(A) it fails to comply with any rule in effect under this chapter, or

(B) it is offered for entry in violation of section 2604 or 2605 of this title, a rule or order under section 2604 or 2605 of this title, or an order issued in a civil action brought under section 2604 or 2606 of this title.

(2) If a chemical substance, mixture, or article is refused entry under paragraph (1), the Secretary of the Treasury shall notify the consignee of such entry refusal, shall not release it to the consignee, and shall cause its disposal or storage (under such rules as the Secretary of the Treasury may prescribe) if it has not been exported by the consignee within 90 days from the date of receipt of notice of such refusal, except that the Secretary of the Treasury may, pending a review by the Administrator of the entry refusal, release to the consignee such substance, mixture, or article on execution of bond for the amount of the full invoice of such substance, mixture, or article (as such value is set forth in the customs entry), together with the duty thereon. On failure to return such substance, mixture, or article for any cause to the custody of the Secretary of the Treasury when demanded, such consignee shall be liable to the United States for liquidated damages equal to the full amount of such bond. All charges for storage, cartage, and labor on and for disposal of substances, mixtures, or articles which are refused entry or release under this section shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future entry made by such owner or consignee.

(b) Rules

The Secretary of the Treasury, after consultation with the Administrator, shall issue rules for the administration of subsection (a) of this section.

(Pub. L. 94-469, § 13, Oct. 11, 1976, 90 Stat. 2034.)

REFERENCES IN TEXT

General headnote 2 to the Tariff Schedules of the United States, referred to in subsec. (a), is set forth in section 1202 of Title 19, Customs Duties.

§ 2613. Disclosure of data

(a) In general

Except as provided by subsection (b) of this section, any information reported to, or otherwise obtained by, the Administrator (or any representative of the Administrator) under this chapter, which is exempt from disclosure pursuant to subsection (a) of section 552 of title 5 by reason of subsection (b)(4) of such section, shall, notwithstanding the provisions of any other section of this chapter, not be disclosed by the Administrator or by any officer or employee of the United States, except that such information—

(1) shall be disclosed to any officer or employee of the United States—

(A) in connection with the official duties of such officer or employee under any law for the protection of health or the environment, or

(B) for specific law enforcement purposes;

(2) shall be disclosed to contractors with the United States and employees of such contractors if in the opinion of the Administrator such disclosure is necessary for the satisfactory performance by the contractor of a contract with the United States entered into on or after October 11, 1976, for the performance of work in connection with this chapter and under such conditions as the Administrator may specify;

(3) shall be disclosed if the Administrator determines it necessary to protect health or the environment against an unreasonable risk of injury to health or the environment; or

(4) may be disclosed when relevant in any proceeding under this chapter, except that disclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding.

In any proceeding under section 552(a) of title 5 to obtain information the disclosure of which has been denied because of the provisions of this subsection, the Administrator may not rely on section 552(b)(3) of such title to sustain the Administrator's action.

(b) Data from health and safety studies

(1) Subsection (a) does not prohibit the disclosure of—

(A) any health and safety study which is submitted under this chapter with respect to—

(i) any chemical substance or mixture which, on the date on which such study is to be disclosed has been offered for commercial distribution, or

(ii) any chemical substance or mixture for which testing is required under section 2603 of this title or for which notification is required under section 2604 of this title, and

(B) any data reported to, or otherwise obtained by, the Administrator from a health and safety study which relates to a chemical substance or mixture described in clause (i) or (ii) of subparagraph (A).

This paragraph does not authorize the release of any data which discloses processes used in the manufacturing or processing of a chemical substance or mixture or, in the case of a mixture, the release of data disclosing the portion of the mixture comprised by any of the chemical substances in the mixture.

(2) If a request is made to the Administrator under subsection (a) of section 552 of title 5 for information which is described in the first sentence of paragraph (1) and which is not information described in the second sentence of such paragraph, the Administrator may not deny such request on the basis of subsection (b)(4) of such section.

(c) Designation and release of confidential data

(1) In submitting data under this chapter, a manufacturer, processor, or distributor in commerce may (A) designate the data which such person believes is entitled to confidential treatment under subsection (a) of this section, and (B) submit such designated data separately from other data submitted under this chapter. A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(2)(A) Except as provided by subparagraph (B), if the Administrator proposes to release for inspection data which has been designated under paragraph (1)(A), the Administrator shall notify, in writing and by certified mail, the manufacturer, processor, or distributor in commerce who submitted such data of the intent to release such data. If the release of such data is to be made pursuant to a request made under section 552(a) of title 5, such notice shall be given immediately upon approval of such request by the Administrator. The Administrator may not release such data until the expiration of 30 days after the manufacturer, processor, or distributor in commerce submitting such data has received the notice required by this subparagraph.

(B)(i) Subparagraph (A) shall not apply to the release of information under paragraph (1), (2), (3), or (4) of subsection (a) of this section, except that the Administrator may not release data under paragraph (3) of subsection (a) of this section unless the Administrator has notified each manufacturer, processor, and distributor in commerce who submitted such data of such release. Such notice shall be made in writing by certified mail at least 15 days before the release of such data, except that if the Administrator determines that the release of such data is necessary to protect against an imminent, unreasonable risk of injury to health or the environment, such notice may be made by such means as the Administrator determines will provide notice at least 24 hours before such release is made.

(ii) Subparagraph (A) shall not apply to the release of information described in subsection (b)(1) of this section other than information described in the second sentence of such subsection.

(d) Criminal penalty for wrongful disclosure

(1) Any officer or employee of the United States or former officer or employee of the United States, who by virtue of such employment or official position has obtained possession of, or has access to, material the disclosure of which is prohibited by subsection (a) of this section, and who knowing that disclosure of such material is prohibited by such subsection, willfully discloses the material in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000 or imprisoned for not more than one year, or both. Section 1905 of title 18 does not apply with respect to the publishing, divulging, disclosure, or making known of, or making available, information reported or otherwise obtained under this chapter.

(2) For the purposes of paragraph (1), any contractor with the United States who is furnished information as authorized by subsection (a)(2) of this section, and any employee of any such contractor, shall be considered to be an employee of the United States.

(e) Access by Congress

Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

(Pub. L. 94-469, § 14, Oct. 11, 1976, 90 Stat. 2034.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2603, 2604 of this title.

§ 2614. Prohibited acts

It shall be unlawful for any person to—

(1) fail or refuse to comply with (A) any rule promulgated or order issued under section 2603 of this title, (B) any requirement prescribed by section 2604 or 2605 of this title, or (C) any rule promulgated or order issued under section 2604 or 2605 of this title;

(2) use for commercial purposes a chemical substance or mixture which such person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of section 2604 or 2605 of this title, a rule or order under section 2604 or 2605 of this title, or an order issued in action brought under section 2604 or 2606 of this title;

(3) fail or refuse to (A) establish or maintain records, (B) submit reports, notices, or other information, or (C) permit access to or

copying of records, as required by this chapter or a rule thereunder; or

(4) fail or refuse to permit entry or inspection as required by section 2610 of this title.

(Pub. L. 94-469, § 15, Oct. 11, 1976, 90 Stat. 2036.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2615, 2616 of this title.

§ 2615. Penalties

(a) Civil

(1) Any person who violates a provision of section 2614 of this title shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day such a violation continues shall, for purposes of this subsection, constitute a separate violation of section 2614 of this title.

(2)(A) A civil penalty for a violation of section section 2614 of this title shall be assessed by the Administrator by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5. Before issuing such an order, the Administrator shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

(B) In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

(C) The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(3) Any person who requested in accordance with paragraph (2)(A) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(4) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or

(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(b) Criminal

Any person who knowingly or willfully violates any provision of section 2614 of this title, shall, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) of this section for such violation, be subject, upon conviction, to a fine of not more than $25,000 for each day of violation, or to imprisonment for not more than one year, or both.

(Pub. L. 94-469, § 16, Oct. 11, 1976, 90 Stat. 2037.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2619, 2629 of this title.

§ 2616. Specific enforcement and seizure

(a) Specific enforcement

(1) The district courts of the United States shall have jurisdiction over civil actions to—

(A) restrain any violation of section 2614 of this title,

(B) restrain any person from taking any action prohibited by section 2604 or 2605 of this title or by a rule or order under section 2604 or 2605 of this title,

(C) compel the taking of any action required by or under this chapter, or

(D) direct any manufacturer or processor of a chemical substance or mixture manufactured or processed in violation of section 2604 or 2605 of this title or a rule or order under section 2604 or 2605 of this title and distributed in commerce, (i) to give notice of such fact to distributors in commerce of such substance or mixture and, to the extent reasonably ascertainable, to other persons in possession of such substance or mixture or exposed to such substance or mixture, (ii) to give public notice of such risk of injury, and (iii) to either replace or repurchase such substance or mixture, whichever the person to which the requirement is directed elects.

(2) A civil action described in paragraph (1) may be brought—

(A) in the case of a civil action described in subparagraph (A) of such paragraph, in the United States district court for the judicial district wherein any act, omission, or transaction constituting a violation of section 2614 of this title occurred or wherein the defendant is found or transacts business, or

(B) in the case of any other civil action described in such paragraph, in the United States district court for the judicial district wherein the defendant is found or transacts business.

In any such civil action process may be served on a defendant in any judicial district in which a defendant resides or may be found. Subpoenas requiring attendance of witnesses in any such action may be served in any judicial district.

(b) Seizure

Any chemical substance or mixture which was manufactured, processed, or distributed in commerce in violation of this chapter or any rule promulgated or order issued under this chapter or any article containing such a substance or mixture shall be liable to be proceeded against, by process of libel, for the seizure and condemnation of such substance, mixture, or article, in any district court of the United States within the jurisdiction of which such substance, mixture, or article is found. Such proceedings shall conform as nearly as possible to proceedings in rem in admiralty.

(Pub. L. 94-469, § 17, Oct. 11, 1976, 90 Stat. 2037.)

§ 2617. Preemption

(a) Effect on State law

(1) Except as provided in paragraph (2), nothing in this chapter shall affect the authority of any State or political subdivision of a State to establish or continue in effect regulation of any chemical substance, mixture, or article containing a chemical substance or mixture.

(2) Except as provided in subsection (b) of this section—

(A) if the Administrator requires by a rule promulgated under section 2603 of this title the testing of a chemical substance or mixture, no State or political subdivision may, after the effective date of such rule, establish or continue in effect a requirement for the testing of such substance or mixture for purposes similar to those for which testing is required under such rule; and

(B) if the Administrator prescribes a rule or order under section 2604 or 2605 of this title (other than a rule imposing a requirement described in subsection (a)(6) of section 2605 of this title) which is applicable to a chemical substance or mixture, and which is designed to protect against a risk of injury to health or the environment associated with such substance or mixture, no State or political subdivision of a State may, after the effective date of such requirement, establish or continue in effect, any requirement which is applicable to such substance or mixture, or an article containing such substance or mixture, and which is designed to protect against such risk unless such requirement (i) is identical to the requirement prescribed by the Administrator, (ii) is adopted under the authority of the Clean Air Act [42 U.S.C. 1857 et seq.] or any other Federal law, or (iii) prohibits the use of such substance or mixture in such State or political subdivision (other than its use in the manufacture or processing of other substances or mixtures).

(b) Exemption

Upon application of a State or political subdivision of a State the Administrator may by rule exempt from subsection (a)(2) of this section, under such conditions as may be prescribed in such rule, a requirement of such State or political subdivision designed to protect against a risk of injury to health or the environment associated with a chemical substance, mixture, or article containing a chemical substance or mixture if—

(1) compliance with the requirement would not cause the manufacturing, processing, distribution in commerce, or use of the substance, mixture, or article to be in violation of the applicable requirement under this chapter described in subsection (a)(2) of this section, and

(2) the State or political subdivision requirement (A) provides a significantly higher degree of protection from such risk than the requirement under this chapter described in subsection (a)(2) of this section and (B) does not, through difficulties in marketing, distribution, or other factors, unduly burden interstate commerce.

(Pub. L. 94-469, § 18, Oct. 11, 1976, 90 Stat. 2038.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a)(2)(B), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, which is classified generally to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1857 of Title 42 and Tables volume.

§ 2618. Judicial review

(a) In general

(1)(A) Not later than 60 days after the date of the promulgation of a rule under section 2603(a), 2604(a)(2), 2604(b)(4), 2605(a), 2605(e), or 2607 of this title, any person may file a petition for judicial review of such rule with the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which such person resides or in which such person's principal place of business is located. Courts of appeals of the United States shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of such a rule if any district court of the United States would have had jurisdiction of such action but for this subparagraph.

(B) Courts of appeals of the United States shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of an order issued under subparagraph (A) or (B) of section 2605(b)(1) of this title if any district court of the United States would have had jurisdiction of such action but for this subparagraph.

(2) Copies of any petition filed under paragraph (1)(A) shall be transmitted forthwith to the Administrator and to the Attorney General by the clerk of the court with which such petition was filed. The provisions of section 2112 of title 28 shall apply to the filing of the rulemaking record of proceedings on which the Administrator based the rule being reviewed under this section and to the transfer of proceedings between United States courts of appeals.

(3) For purposes of this section, the term "rulemaking record" means—

(A) the rule being reviewed under this section;

(B) in the case of a rule under section 2603(a) of this title, the finding required by such section, in the case of a rule under section 2604(b)(4) of this title, the finding required by such section, in the case of a rule under section 2605(a) of this title the finding required by section 2604(f) or 2605(a) of this title, as the case may be, in the case of a rule under section 2605(a) of this title, the statement required by section 2605(c)(1) of this title, and in the case of a rule under section 2605(e) of this title, the findings required by paragraph (2)(B) or (3)(B) of such section, as the case may be;

(C) any transcript required to be made of oral presentations made in proceedings for the promulgation of such rule;

(D) any written submission of interested parties respecting the promulgation of such rule; and

(E) any other information which the Administrator considers to be relevant to such rule and which the Administrator identified, on or before the date of the promulgation of such rule, in a notice published in the Federal Register.

(b) Additional submissions and presentations; modifications

If in an action under this section to review a rule the petitioner or the Administrator applies to the court for leave to make additional oral submissions or written presentations respecting such rule and shows to the satisfaction of the court that such submissions and presentations would be material and that there were reasonable grounds for the submissions and failure to make such submissions and presentations in the proceeding before the Administrator, the court may order the Administrator to provide additional opportunity to make such submissions and presentations. The Administrator may modify or set aside the rule being reviewed or make a new rule by reason of the additional submissions and presentations and shall file such modified or new rule with the return of such submissions and presentations. The court shall thereafter review such new or modified rule.

(c) Standard of review

(1)(A) Upon the filing of a petition under subsection (a)(1) for judicial review of a rule, the court shall have jurisdiction (i) to grant appropriate relief, including interim relief, as provided in chapter 7 of title 5, and (ii) except as otherwise provided in subparagraph (B), to review such rule in accordance with chapter 7 of title 5.

(B) Section 706 of title 5 shall apply to review of a rule under this section, except that—

(i) in the case of review of a rule under section 2603(a), 2604(b)(4), 2605(a), or 2605(e) of this title, the standard for review prescribed by paragraph (2)(E) of such section 706 shall not apply and the court shall hold unlawful and set aside such rule if the court finds that the rule is not supported by substantial evidence in the rulemaking record (as defined in subsection (a)(3) of this section) taken as a whole;

(ii) in the case of review of a rule under section 2605(a) of this title, the court shall hold unlawful and set aside such rule if it finds that—

(I) a determination by the Administrator under section 2605(c)(3) of this title that the petitioner seeking review of such rule is not entitled to conduct (or have conducted) cross-examination or to present rebuttal submissions, or

(II) a rule of, or ruling by, the Administrator under section 2605(c)(3) of this title limiting such petitioner's cross-examination or oral presentations,

has precluded disclosure of disputed material facts which was necessary to a fair determination by the Administrator of the rulemaking proceeding taken as a whole; and section 706(2)(D) shall not apply with respect to a determination, rule, or ruling referred to in subclause (I) or (II); and

(iii) the court may not review the contents and adequacy of—

(I) any statement required to be made pursuant to section 2605(c)(1) of this title, or

(II) any statement of basis and purpose required by section 553(c) of title 5, to be incorporated in the rule

except as part of a review of the rulemaking record taken as a whole.

The term "evidence" as used in clause (i) means any matter in the rulemaking record.

(C) A determination, rule, or ruling of the Administrator described in subparagraph (B)(ii) may be reviewed only in an action under this section and only in accordance with such subparagraph.

(2) The judgment of the court affirming or setting aside, in whole or in part, any rule reviewed in accordance with this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(d) Fees and costs

The decision of the court in an action commenced under subsection (a) of this section, or of the Supreme Court of the United States on review of such a decision, may include an award of costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate.

(e) Other remedies

The remedies as provided in this section shall be in addition to and not in lieu of any other remedies provided by law.

(Pub. L. 94-469, § 19, Oct. 11, 1976, 90 Stat. 2039.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2605 of this title.

§ 2619. Citizens' civil actions

(a) In general

Except as provided in subsection (b) of this section, any person may commence a civil action—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation

of this chapter or any rule promulgated under section 2603, 2604, or 2605 of this title or order issued under section 2604 of this title to restrain such violation, or

(2) against the Administrator to compel the Administrator to perform any act or duty under this chapter which is not discretionary.

Any civil action under paragraph (1) shall be brought in the United States district court for the district in which the alleged violation occurred or in which the defendant resides or in which the defendant's principal place of business is located. Any action brought under paragraph (2) shall be brought in the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the plaintiff is domiciled. The district courts of the United States shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties. In any civil action under this subsection process may be served on a defendant in any judicial district in which the defendant resides or may be found and subpoenas for witnesses may be served in any judicial district.

(b) Limitation

No civil action may be commenced—

(1) under subsection (a)(1) of this section to restrain a violation of this chapter or rule or order under this chapter—

(A) before the expiration of 60 days after the plaintiff has given notice of such violation (i) to the Administrator, and (ii) to the person who is alleged to have committed such violation, or

(B) if the Administrator has commenced and is diligently prosecuting a proceeding for the issuance of an order under section 2615(a)(2) of this title to require compliance with this chapter or with such rule or order or if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with this chapter or with such rule or order, but if such proceeding or civil action is commenced after the giving of notice, any person giving such notice may intervene as a matter of right in such proceeding or action; or

(2) under subsection (a)(2) of this section before the expiration of 60 days after the plaintiff has given notice to the Administrator of the alleged failure of the Administrator to perform an act or duty which is the basis for such action or, in the case of an action under such subsection for the failure of the Administrator to file an action under section 2606 of this title, before the expiration of ten days after such notification.

Notice under this subsection shall be given in such manner as the Administrator shall prescribe by rule.

(c) General

(1) In any action under this section, the Administrator, if not a party, may intervene as a matter of right.

(2) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate. Any court, in issuing its decision in an action brought to review such an order, may award costs of suit and reasonable fees for attorneys if the court determines that such an award is appropriate.

(3) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of this chapter or any rule or order under this chapter or to seek any other relief.

(d) Consolidation

When two or more civil actions brought under subsection (a) of this section involving the same defendant and the same issues or violations are pending in two or more judicial districts, such pending actions, upon application of such defendants to such actions which is made to a court in which any such action is brought, may, if such court in its discretion so decides, be consolidated for trial by order (issued after giving all parties reasonable notice and opportunity to be heard) of such court and tried in—

(1) any district which is selected by such defendant and in which one of such actions is pending,

(2) a district which is agreed upon by stipulation between all the parties to such actions and in which one of such actions is pending, or

(3) a district which is selected by the court and in which one of such actions is pending.

The court issuing such an order shall give prompt notification of the order to the other courts in which the civil actions consolidated under the order are pending.

(Pub. L. 94-469, § 20, Oct. 11, 1976, 90 Stat. 2041.)

§ 2620. Citizens' petitions

(a) In general

Any person may petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal of a rule under section 2603, 2605, or 2607 of this title or an order under section 2604(e) or 2605(b)(2) of this title.

(b) Procedures

(1) Such petition shall be filed in the principal office of the Administrator and shall set forth the facts which it is claimed establish that it is necessary to issue, amend, or repeal a rule under section 2603, 2605, 2607 of this title or an order under section 2604(e), 2605(b)(1)(A), or 2605(b)(1)(B) of this title.

(2) The Administrator may hold a public hearing or may conduct such investigation or proceeding as the Administrator deems appropriate in order to determine whether or not such petition should be granted.

(3) Within 90 days after filing of a petition described in paragraph (1), the Administrator shall either grant or deny the petition. If the Administrator grants such petition, the Administrator shall promptly commence an appropriate proceeding in accordance with section 2603, 2604, 2605, or 2607 of this title. If the Administrator denies such petition, the Administrator

shall publish in the Federal Register the Administrator's reasons for such denial.

(4)(A) If the Administrator denies a petition filed under this section (or if the Administrator fails to grant or deny such petition within the 90-day period) the petitioner may commence a civil action in a district court of the United States to compel the Administrator to initiate a rulemaking proceeding as requested in the petition. Any such action shall be filed within 60 days after the Administrator's denial of the petition or, if the Administrator fails to grant or deny the petition within 90 days after filing the petition, within 60 days after the expiration of the 90-day period.

(B) In an action under subparagraph (A) respecting a petition to initiate a proceeding to issue a rule under section 2603, 2605, or 2607 of this title or an order under section 2604(e) or 2605(b)(2) of this title, the petitioner shall be provided an opportunity to have such petition considered by the court in a de novo proceeding. If the petitioner demonstrates to the satisfaction of the court by a preponderance of the evidence that—

(i) in the case of a petition to initiate a proceeding for the issuance of a rule under section 2603 of this title or an order under section 2604(e) of this title—

(I) information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance to be subject to such rule or order; and

(II) in the absence of such information, the substance may present an unreasonable risk to health or the environment, or the substance is or will be produced in substantial quantities and it enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to it; or

(ii) in the case of a petition to initiate a proceeding for the issuance of a rule under section 2605 or 2607 of this title or an order under section 2605(b)(2) of this title, there is a reasonable basis to conclude that the issuance of such a rule or order is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment.[1]

the court shall order the Administrator to initiate the action requested by the petitioner. If the court finds that the extent of the risk to health or the environment alleged by the petitioner is less than the extent of risks to health or the environment with respect to which the Administrator is taking action under this chapter and there are insufficient resources available to the Administrator to take the action requested by the petitioner, the court may permit the Administrator to defer initiating the action requested by the petitioner until such time as the court prescribes.

(C) The court in issuing any final order in any action brought pursuant to subparagraph (A) may award costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate. Any court, in issuing its decision in an action brought to review such an order, may award costs of suit and reasonable fees for attorneys if the court determines that such an award is appropriate.

(5) The remedies under this section shall be in addition to, and not in lieu of, other remedies provided by law.

(Pub. L. 94-469, § 21, Oct. 11, 1976, 90 Stat. 2042.)

§ 2621. National defense waiver

The Administrator shall waive compliance with any provision of this chapter upon a request and determination by the President that the requested waiver is necessary in the interest of national defense. The Administrator shall maintain a written record of the basis upon which such waiver was granted and make such record available for in camera examination when relevant in a judicial proceeding under this chapter. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for national defense purposes, unless, upon the request of the President, the Administrator determines to omit such publication because the publication itself would be contrary to the interests of national defense, in which event the Administrator shall submit notice thereof to the Armed Services Committees of the Senate and the House of Representatives.

(Pub. L. 94-469, § 22, Oct. 11, 1976, 90 Stat. 2044.)

§ 2622. Employee protection

(a) In general

No employer may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter;

(2) testified or is about to testify in any such proceeding; or

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this chapter.

(b) Remedy

(1) Any employee who believes that the employee has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section may, within 30 days after such alleged violation occurs, file (or have any person file on the employee's behalf) a complaint with the Secretary of Labor (hereinafter in this section referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting on behalf of the complainant) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this paragraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

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[1] So in original, the period probably should be a semicolon.

(B) If in response to a complaint filed under paragraph (1) the Secretary determines that a violation of subsection (a) of this section has occurred, the Secretary shall order (i) the person who committed such violation to take affirmative action to abate the violation, (ii) such person to reinstate the complainant to the complainant's former position together with the compensation (including back pay), terms, conditions, and privileges of the complainant's employment, (iii) compensatory damages, and (iv) where appropriate, exemplary damages. If such an order issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) reasonably incurred, as determined by the Secretary, by the complianant for, or in connection with, the bringing of the complaint upon which the order was issued.

(c) Review

(1) Any employee or employer adversely affected or aggrieved by an order issued under subsection (b) of this section may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5.

(2) An order of the Secretary, with respect to which review could have been obtained under paragraph (1), shall not be subject to judicial review in any criminal or other civil proceeding.

(d) Enforcement

Whenever a person has failed to comply with an order issued under subsection (b)(2) of this section, the Secretary shall file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief, including injunctive relief and compensatory and exemplary damages. Civil actions brought under this subsection shall be heard and decided expeditiously.

(e) Exclusion

Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from the employee's employer (or any agent of the employer), deliberately causes a violation of any requirement of this chapter.

(Pub. L. 94-469, § 23, Oct. 11, 1976, 90 Stat. 2044.)

§ 2623. Employee effects

(a) In general

The Administrator shall evaluate on a continuing basis the potential effects on employment (including reductions in employment or loss of employment from threatened plant closures) of—

(1) the issuance of a rule or order under section 2603, 2604, or 2605 of this title, or

(2) a requirement of section 2604 or 2605 of this title.

(b) Investigations

(1) Any employee (or any representative of an employee) may request the Administrator to make an investigation of—

(A) a discharge or layoff or threatened discharge or layoff of the employee, or

(B) adverse or threatened adverse effects on the employee's employment,

allegedly resulting from a rule or order under section 2603, 2604, or 2605 of this title or a requirement of section 2604 or 2605 of this title. Any such request shall be made in writing, shall set forth with reasonable particularity the grounds for the request, and shall be signed by the employee, or representative of such employee, making the request.

(2)(A) Upon receipt of a request made in accordance with paragraph (1) the Administrator shall (i) conduct the investigation requested, and (ii) if requested by any interested person, hold public hearings on any matter involved in the investigation unless the Administrator, by order issued within 45 days of the date such hearings are requested, denies the request for the hearings because the Administrator determines there are no reasonable grounds for holding such hearings. If the Administrator makes such a determination, the Administrator shall notify in writing the person requesting the hearing of the determination and the reasons therefor and shall publish the determination and the reasons therefor in the Federal Register.

(B) If public hearings are to be held on any matter involved in an investigation conducted under this subsection—

(i) at least five days' notice shall be provided the person making the request for the investigation and any person identified in such request,

(ii) such hearings shall be held in accordance with section 2605(c)(3) of this title, and

(iii) each employee who made or for whom was made a request for such hearings and the employer of such employee shall be required to present information respecting the applicable matter referred to in paragraph (1)(A) or (1)(B) together with the basis for such information.

(3) Upon completion of an investigation under paragraph (2), the Administrator shall make findings of fact, shall make such recommendations as the Administrator deems appro-

priate, and shall make available to the public such findings and recommendations.

(4) This section shall not be construed to require the Administrator to amend or repeal any rule or order in effect under this chapter.

(Pub. L. 94-469, § 24, Oct. 11, 1976, 90 Stat. 2045.)

§ 2624. Studies

(a) Indemnification study

The Administrator shall conduct a study of all Federal laws administered by the Administrator for the purpose of determining whether and under what conditions, if any, indemnification should be accorded any person as a result of any action taken by the Administrator under any such law. The study shall—

(1) include an estimate of the probable cost of any indemnification programs which may be recommended;

(2) include an examination of all viable means of financing the cost of any recommended indemnification; and

(3) be completed and submitted to Congress within two years from the effective date of enactment of this chapter.

The General Accounting Office shall review the adequacy of the study submitted to Congress pursuant to paragraph (3) and shall report the results of its review to the Congress within six months of the date such study is submitted to Congress.

(b) Classification, storage, and retrieval study

The Council on Environmental Quality, in consultation with the Administrator, the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the heads of other appropriate Federal departments or agencies, shall coordinate a study of the feasibility of establishing (1) a standard classification system for chemical substances and related substances, and (2) a standard means for storing and for obtaining rapid access to information respecting such substances. A report on such study shall be completed and submitted to Congress not later than 18 months after the effective date of enactment of this chapter.

(Pub. L. 94-469, § 25, Oct. 11, 1976, 90 Stat. 2046.)

REFERENCES IN TEXT

The "effective date of enactment of this chapter", referred to in subsecs. (a)(3) and (b), probably means January 1, 1977, the effective date of the chapter prescribed by sec. 31 of Pub. L. 94-469, which is set out as a note under section 2601 of this title, rather than October 11, 1976, the date of enactment.

§ 2625. Administration

(a) Cooperation of Federal agencies

Upon request by the Administrator, each Federal department and agency is authorized—

(1) to make its services, personnel, and facilities available (with or without reimbursement) to the Administrator to assist the Administrator in the administration of this chapter; and

(2) to furnish to the Administrator such information, data, estimates, and statistics, and to allow the Administrator access to all information in its possession as the Administrator may reasonably determine to be necessary for the administration of this chapter.

(b) Fees

(1) The Administrator may, by rule, require the payment of a reasonable fee from any person required to submit data under section 2603 or 2604 of this title to defray the cost of administering this chapter. Such rules shall not provide for any fee in excess of $2,500 or, in the case of a small business concern, any fee in excess of $100. In setting a fee under this paragraph, the Administrator shall take into account the ability to pay of the person required to submit the data and the cost to the Administrator of reviewing such data. Such rules may provide for sharing such a fee in any case in which the expenses of testing are shared under section 2603 or 2604 of this title.

(2) The Administrator, after consultation with the Administrator of the Small Business Administration, shall by rule prescribe standards for determining the persons which qualify as small business concerns for purposes of paragraph (1).

(c) Action with respect to categories

(1) Any action authorized or required to be taken by the Administrator under any provision of this chapter with respect to a chemical substance or mixture may be taken by the Administrator in accordance with that provision with respect to a category of chemical substances or mixtures. Whenever the Administrator takes action under a provision of this chapter with respect to a category of chemical substances or mixtures, any reference in this chapter to a chemical substance or mixture (insofar as it relates to such action) shall be deemed to be a reference to each chemical substance or mixture in such category.

(2) For purposes of paragraph (1):

(A) The term "category of chemical substances" means a group of chemical substances the members of which are similar in molecular structure, in physical, chemical, or biological properties, in use, or in mode of entrance into the human body or into the environment, or the members of which are in some other way suitable for classification as such for purposes of this chapter, except that such term does not mean a group of chemical substances which are grouped together solely on the basis of their being new chemical substances.

(B) The term "category of mixtures" means a group of mixtures the members of which are similar in molecular structure, in physical, chemical, or biological properties, in use, or in the mode of entrance into the human body or into the environment, or the members of which are in some other way suitable for classification as such for purposes of this chapter.

(d) Assistance office

The Administrator shall establish in the Environmental Protection Agency an identifiable office to provide technical and other nonfinancial assistance to manufacturers and processors of chemical substances and mixtures respecting the requirements of this chapter applicable to such manufacturers and processors, the policy of the Agency respecting the application of such requirements to such manufacturers and processors, and the means and methods by which such manufacturers and processors may comply with such requirements.

(e) Financial disclosures

(1) Except as provided under paragraph (3), each officer or employee of the Environmental Protection Agency and the Department of Health, Education, and Welfare who—

(A) performs any function or duty under this chapter, and

(B) has any known financial interest (i) in any person subject to this chapter or any rule or order in effect under this chapter, or (ii) in any person who applies for or receives any grant or contract under this chapter,

shall, on February 1, 1978, and on February 1 of each year thereafter, file with the Administrator or the Secretary of Health, Education, and Welfare (hereinafter in this subsection referred to as the "Secretary"), as appropriate, a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be made available to the public.

(2) The Administrator and the Secretary shall—

(A) act within 90 days of January 1, 1977—

(i) to define the term "known financial interests" for purposes of paragraph (1), and

(ii) to establish the methods by which the requirement to file written statements specified in paragraph (1) will be monitored and enforced, including appropriate provisions for review by the Administrator and the Secretary of such statements; and

(B) report to the Congress on June 1, 1978, and on June 1 of each year thereafter with respect to such statements and the actions taken in regard thereto during the preceding calendar year.

(3) The Administrator may by rule identify specific positions with the Environmental Protection Agency, and the Secretary may by rule identify specific positions with the Department of Health, Education, and Welfare, which are of a nonregulatory or nonpolicymaking nature, and the Administrator and the Secretary may by rule provide that officers or employees occupying such positions shall be exempt from the requirements of paragraph (1).

(4) This subsection does not supersede any requirement of chapter 11 of title 18.

(5) Any officer or employee who is subject to, and knowingly violates, this subsection or any rule issued thereunder, shall be fined not more than $2,500 or imprisoned not more than one year, or both.

(f) Statement of basis and purpose

Any final order issued under this chapter shall be accompanied by a statement of its basis and purpose. The contents and adequacy of any such statement shall not be subject to judicial review in any respect.

(g) Assistant Administrator

(1) The President, by and with the advice and consent of the Senate, shall appoint an Assistant Administrator for Toxic Substances of the Environmental Protection Agency. Such Assistant Administrator shall be a qualified individual who is, by reason of background and experience, especially qualified to direct a program concerning the effects of chemicals on human health and the environment. Such Assistant Administrator shall be responsible for (A) the collection of data, (B) the preparation of studies, (C) the making of recommendations to the Administrator for regulatory and other actions to carry out the purposes and to facilitate the administration of this chapter, and (D) such other functions as the Administrator may assign or delegate.

(2) The Assistant Administrator to be appointed under paragraph (1) shall (A) be in addition to the Assistant Administrators of the Environmental Protection Agency authorized by section 1(d) of Reorganization Plan No. 3 of 1970, and (B) be compensated at the rate of pay authorized for such Assistant Administrators.

(Pub. L. 94-469, § 26, Oct. 11, 1976, 90 Stat. 2046.)

REFERENCES IN TEXT

Reorganization Plan No. 3 of 1970, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

§ 2626. Development and evaluation of test methods

(a) In general

The Secretary of Health, Education, and Welfare, in consultation with the Administrator and acting through the Assistant Secretary for Health, may conduct, and make grants to public and nonprofit private entities and enter into contracts with public and private entities for, projects for the development and evaluation of inexpensive and efficient methods (1) for determining and evaluating the health and environmental effects of chemical substances and mixtures, and their toxicity, persistence, and other characteristics which affect health and the environment, and (2) which may be used for the development of test data to meet the requirements of rules promulgated under section 2603 of this title. The Administrator shall consider such methods in prescribing under section 2603 of this title standards for the development of test data.

(b) Approval of Secretary

No grant may be made or contract entered into under subsection (a) of this section unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be submitted in such form and manner and contain such information as the Secretary may require. The Secretary may apply such conditions to grants and contracts under subsection (a) of this section as the Secretary determines are necessary to carry out the purposes of such subsection. Contracts may be entered into under such subsection without regard to section 529 of title 31 and section 5 of title 41.

(c) Annual reports

(1) The Secretary shall prepare and submit to the President and the Congress on or before January 1 of each year a report of the number of grants made and contracts entered into under this section and the results of such grants and contracts.

(2) The Secretary shall periodically publish in the Federal Register reports describing the progress and results of any contract entered into or grant made under this section.

(Pub. L. 94-469, § 27, Oct. 11, 1976, 90 Stat. 2049.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2628 of this title.

§ 2627. State programs

(a) In general

For the purpose of complementing (but not reducing) the authority of, or actions taken by, the Administrator under this chapter, the Administrator may make grants to States for the establishment and operation of programs to prevent or eliminate unreasonable risks within the States to health or the environment which are associated with a chemical substance or mixture and with respect to which the Administrator is unable or is not likely to take action under this chapter for their prevention or elimination. The amount of a grant under this subsection shall be determined by the Administrator, except that no grant for any State program may exceed 75 per centum of the establishment and operation costs (as determined by the Administrator) of such program during the period for which the grant is made.

(b) Approval of Administrator

(1) No grant may be made under subsection (a) of this section unless an application therefor is submitted to and approved by the Administrator. Such an application shall be submitted in such form and manner as the Administrator may require and shall—

(A) set forth the need of the applicant for a grant under subsection (a) of this section,

(B) identify the agency or agencies of the State which shall establish or operate, or both, the program for which the application is submitted,

(C) describe the actions proposed to be taken under such program,

(D) contain or be supported by assurances satisfactory to the Administrator that such program shall, to the extent feasible, be integrated with other programs of the applicant for environmental and public health protection,

(E) provide for the making of such reports and evaluations as the Administrator may require, and

(F) contain such other information as the Administrator may prescribe.

(2) The Administrator may approve an application submitted in accordance with paragraph (1) only if the applicant has established to the satisfaction of the Administrator a priority need, as determined under rules of the Administrator, for the grant for which the application has been submitted. Such rules shall take into consideration the seriousness of the health effects in a State which are associated with chemical substances or mixtures, including cancer, birth defects, and gene mutations, the extent of the exposure in a State of human beings and the environment to chemical substances and mixtures, and the extent to which chemical substances and mixtures are manufactured, processed, used, and disposed of in a State.

(c) Annual reports

Not later than six months after the end of each of the fiscal years 1979, 1980, and 1981, the Administrator shall submit to the Congress a report respecting the programs assisted by grants under subsection (a) of this section in the preceding fiscal year and the extent to which the Administrator has disseminated information respecting such programs.

(d) Authorization

For the purpose of making grants under subsection (a) of this section there are authorized to be appropriated $1,500,000 for the fiscal year ending September 30, 1977, $1,500,000 for the fiscal year ending September 30, 1978, and $1,500,000 for the fiscal year ending September 30, 1979. Sums appropriated under this subsection shall remain available until expended.

(Pub. L. 94-469, § 28, Oct. 11, 1976, 90 Stat. 2049.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2628 of this title.

§ 2628. Authorization of appropriations

There are authorized to be appropriated to the Administrator for purposes of carrying out this chapter (other than sections 2626 and 2627 of this title and subsections (a) and (c) through (g) of section 2609 of this title) $10,100,000 for the fiscal year ending September 30, 1977, $12,625,000 for the fiscal year ending September 30, 1978, $16,200,000 for the fiscal year ending September 30, 1979. No part of the funds appropriated under this section may be used to construct any research laboratories.

(Pub. L. 94-469, § 29, Oct. 11, 1976, 90 Stat. 2050.)

§ 2629. Annual report

The Administrator shall prepare and submit to the President and the Congress on or before January 1, 1978, and on or before January 1 of each succeeding year a comprehensive report on the administration of this chapter during the preceding fiscal year. Such reports shall include—

(1) a list of the testing required under section 2603 of this title during the year for which the report is made and an estimate of the costs incurred during such year by the persons required to perform such tests;

(2) the number of notices received during such year under section 2604 of this title, the number of such notices received during such year under such section for chemical substances subject to a rule, and a summary of any action taken during such year under section 2604(g) of this title;

(3) a list of rules issued during such year under section 2605 of this title;

(4) a list, with a brief statement of the issues, of completed or pending judicial actions under this chapter and administrative actions under section 2615 of this title during such year;

(5) a summary of major problems encountered in the administration of this chapter; and

(6) such recommendations for additional legislation as the Administrator deems necessary to carry out the purposes of this chapter.

(Pub. L. 94-469, § 30, Oct. 11, 1976, 90 Stat. 2050.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2608 of this title.

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